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SHERIFF COURT PRACTICE



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SHERIFF COURT PRACTICE

WITH APPENDICES CONTAINING THE SHERIFF COURTS
(SCOTLAND) ACT, 1907, THE SHERIFF COURTS
(SCOTLAND) ACT, 1913, ACTS OF SEDERUNT
AFFECTING THE SHERIFF COURT,
AND FORMS OF WRITS

BY

W. J. LEWIS, B.L., S.S.C.,

READER IN EVIDENCE AND PROCEDURE IN THE UNIVERSITY OF EDINBURGH

SEVENTH EDITION

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PREFACE TO THE SEVENTH EDITION

THE previous edition of "Sheriff Court Practice" was published immediately after the passing of the Sheriff Court Act of 1913. The effective working of the Sheriff Court Act of 1907, as amended by the statute of 1913, has necessitated little rewriting of the text, but the whole work has been revised, decisions up to date have been noted, and Acts of Sederunt issued since the Codifying Act of Sederunt of 1913 have been included in the Appendix.

The decisions of the various Courts reported since 1913 to which reference has been made—about 300 in number—relate to matters of practice and procedure generally, few dealing solely with questions arising under the Sheriff Court Statutes. The citation of cases is brought down to 1923 *Session Cases*, p. 640; 60 *Scots Law Reporter*, p. 512; 1923 *Scots Law Times*, p. 592; 1923 *Scots Law Times* (Sheriff Court Reports) 108; and 34 *Sheriff Court Reports*, p. 248.

The necessity of limiting the size of the book has precluded the adoption of a frequently expressed suggestion that the Appendix of Forms might be enlarged. Only a few styles have been added to those of the previous edition. These forms, besides having stood the test of several years, have now received the benefit of careful revision by Mr. George Wood, Depute Sheriff-Clerk of Midlothian. Mr.

William Petrie, Depute Commissary Clerk, Edinburgh, has been good enough to revise the forms in use in his department. To these officials, who have generously given me the benefit of their large experience, I wish to express my thanks.

Mr. James Macdonald, Advocate, has again placed me under obligation for invaluable assistance rendered in the revision of the text. By useful suggestions he has greatly aided me in my endeavour to make this edition a useful and reliable manual of practice.

W. J. L.

EDINBURGH, 1st October, 1923.

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Sheriff Court Practice in Civil Causes

CHAPTER I.

COMPETENCY AND JURISDICTION

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Competency and Jurisdiction.—Jurisdiction is “the power a Court possesses of trying a cause, and pronouncing judgment.”

In order that an action may be competently brought in the Sheriff Court, the following requisites must concur:—

1. The subject-matter must be one with which the Sheriff has power to deal—*i.e.* the action must be competent as to its subject.
2. The remedy sought in the action must be such as the Sheriff can competently grant—*i.e.* the claim or demand of the pursuer must be competent.
3. The defender or party against whom the decree is asked, or the remedy is sought, must be subject to the jurisdiction of the Sheriff Court.

Whenever these requisites concur, the Sheriff is vested

with jurisdiction, and the action, as regards jurisdiction, is competent.

If it is to be maintained that the Sheriff has no jurisdiction, a plea against jurisdiction, which should indicate the grounds on which it is based, should be stated *in limine*. *Fraser-Johnston Engineering Co. v. Jeffs*, 1920, S.C. 222; 57 S.L.R. 214; 1920, 1 S.L.T. 131. (Plea allowed though not stated until adjustment of the record.)

Where the jurisdiction is disputed, the Sheriff ought to determine that question, before proceeding to consider the merits of the cause. The decision of the Sheriff, however, does not settle the question absolutely. If for any reason the Sheriff has not jurisdiction, the proceedings will be null, and open to interdict, suspension, or reduction, except in so far as the defect is one which may be obviated by the plea of personal bar, acquiescence, or other equitable plea. E.g. *Camperdown v. Auchterarder Presbytery*, 1902, 5 F. 61; 40 S.L.R. 45; 10 S.L.T. 336. Distinction must be made between cases in which there is an absolute want of jurisdiction which renders the proceedings null, and cases of defective jurisdiction in which failure to take the proper remedy obviates challenge. *Brown & Critchley Ltd. v. Decorative Art Journals Co. Ltd.*, 1922, S.C. 192; 59 S.L.R. 241; 1922 S.L.T. 117.

As to competency of interdict in the Court of Session against the Sheriff entertaining a case under the Workmen's Compensation Act, where his jurisdiction is disputed, see *Leask v. Swan and Others*, 1908, 16 S.L.T. 388.

The general rule is that a judge who has jurisdiction is bound, when called on, to exercise it.

Clements v. Macaulay, 1866, 4 M. 583; *Forbes v. Underwood*, 1886, 13 R. 465; 23 S.L.R. 324.

To this general rule there are certain exceptions:—

1. There may be objections of a personal character to the judge which operate as a bar to his exercising his jurisdiction.
2. The Sheriff Court Act of 1907 empowers a Sheriff upon sufficient cause, even where he has jurisdiction, to transfer a cause from his own Court to another sheriffdom.
3. The parties may voluntarily exclude the jurisdiction.
4. Various statutes dealing with special matters ex-

pressly or impliedly exclude or limit the jurisdiction of the Sheriff Court in the matters referred to.

Declinature of Jurisdiction.— Either of the parties, or the Sheriff himself, may “decline the jurisdiction.” The grounds of declinature of jurisdiction are—

1. Relationship—*i.e.* that the Sheriff is father, brother, son, uncle, or nephew by consanguinity or affinity of any of the parties interested in the cause.

Relationship is a statutory disqualification. Act 1594, c. 212; Act 1681, c. 13; *Moubray's Trs. v. Moubray*, 1883, 10 R. 460; *Moncrieff v. Moncrieff*, 1904, 6 F. 1021; 41 S.L.R. 850; 12 S.L.T. 267. *M'Gilvray v. Assessor for Oban*, 1916, S.C. 665; 53 S.L.R. 486; 1916, 1 S.L.T. 102. (Member of Valuation Committee brother of Assessor.)

2. Interest—*i.e.* that the Sheriff is interested in the subject-matter of the action.

This may be—

(a) Any pecuniary interest, whether personal or as a trustee.

It is not a disqualification in any judge—

(1) That he holds shares or stock in a Chartered Bank in Scotland (A.S., 1st February, 1820); or

(2) That he is a partner in a Life or Fire Insurance Company; or

(3) That he is possessed, merely as trustee, of stock or shares of an Incorporated Company. Court of Session Act, 1868, 31 & 32 Vict. c. 100, sec. 103.

Sellar v. Highland Railway Co., 1919, S.C. (H.L.) 19; 56 S.L.R. 216; 1919, 1 S.L.T. 149.

(b) Any interest other than pecuniary, if it be substantial or reasonably likely to cause bias in the mind of the judge.

Magistrates of a burgh were held not to be disqualified from judging in matters affecting the interests of the burgh, *Wildridge v. Anderson*, 1897, 25 R. (J.C.) 27; 35 S.L.R. 125; 5 S.L.T. 206; *Downie v. Fisherrow Harbour Trs.*, 1903, 5 F. (J.C.) 101; 40 S.L.R. 847; 11 S.L.T. 250; *Rae v. Hamilton*, 1904, 6 F. (J.C.) 42; 41 S.L.R. 635; 12 S.L.T. 134. Members of a local authority sitting as magistrates in a prosecution under Roads and Bridges Act, 1878,

were held not to be disqualified on the ground of interest. *Martin v. Nicholson*, 1920, S.C. (J.) 32; 57 S.L.R. 138; 1920, 1 S.L.T. 67.

It is not a disqualification that a judge had previously acted as counsel in the cause, *Hall v. Hall*, 1891, 18 R. 690; *Free Church of Scotland v. Macrae*, 1905, 7 F. 686; 42 S.L.R. 632; 13 S.L.T. 77; *M'Cardle v. M'Cardle's Judicial Factor*, 1906, 8 F. 419; 43 S.L.R. 282; 13 S.L.T. 740. (Declinature exercised by judge.)

Subscription to funds of a society whose object is the reduction of licences does not disqualify the subscriber as a licensing magistrate, *Goodall v. Bilsland and Others*, 1909, S.C. 1152; 46 S.L.R. 555; 1 S.L.T. 376; see also *M'Gehen v. Knox*, 1913, S.C. 688; 50 S.L.R. 463; 1 S.L.T. 283; and *Gorman v. Wright*, 1916, S.C. (J.) 44; 53 S.L.R. 617; 1916, 2 S.L.T. 54.

Declinature, except so far as it is on statutory grounds, may be waived by the parties.

Caledonian Railway Co. v. Ramsay, 1897, 24 R. (J.C.) 48; 34 S.L.R. 526; 4 S.L.T. 341 (judges—shareholders in railway). If the plea of declinature is to be taken it must be stated *in initio litis*, *Duke of Athole v. Robertson*, 1869, 8 M. 299; 42 J. 135.

If the disqualification is statutory any procedure carried out is null, *Ommaney v. Smith*, 1851, 13 D. 678.

Transfer of Cause by Sheriff from one Sheriffdom to Another.—The power to transfer a cause from one sheriffdom to another was conferred on the Sheriff by the Act of 1907. It may be exercised, *ex proprio motu*, by a Sheriff who is vested with jurisdiction in two cases:—

(1) Where there are two or more defenders, and the cause is brought in the Court of the domicile of one of them, the Sheriff, if he thinks it expedient, may transfer the cause to any other Court which has jurisdiction over any of the defenders. Rule 19.

An action so transferred is to proceed in all respects as if it had been originally brought in the Court to which it has been transferred. The transference can be to another Sheriff Court only.

It has been held that there is an appeal to the Sheriff, with leave of the Sheriff-Substitute, against an interlocutor transferring a cause, *Lamb & Co. v. Pearson & Rose*, 1912, 28 Sh. Ct. Rep. 80.

(2) The Sheriff may, upon sufficient cause, remit any cause to another sheriffdom. Rule 20.

The reasons for the transfer in this case have to be stated in the interlocutor. If the interlocutor is that of a Sheriff-Substitute there is an appeal, with leave only, to the Sheriff, within seven days, but no further appeal. Rule 20.

The foregoing powers amount to an introduction into Sheriff Court procedure of the plea of *forum non conveniens*, as between different sheriffdoms. This plea, except as regards different counties in one sheriffdom, was, previous to 1907, only applicable where there was jurisdiction in the Court of Session and also in the Court of another country. The case intended to be remedied by rule 19 is evidently abuse of the right under sec. 6 (a) of the Act of 1907 as amended by the Act of 1913, to bring an action against several parties in a sheriffdom in which only one of the defenders resides. What is contemplated as "sufficient cause" under rule 20 is not so clear, but no doubt it would require to be some ground peculiar to the action in question. Contingency between two causes might be a good reason for having them both before one judge, but the Act does not give power to a Sheriff to bring a cause from another sheriffdom to his Court, but only to remit from his own Court to another.

The stating of the plea of *forum non conveniens* assumes that there is jurisdiction in the Court before which the plea is stated, and is based upon the special facts of the case in question leading to the conclusion that in the interest of parties it is expedient that the jurisdiction should not be exercised by that Court, but by the Court of some other country which is also possessed with jurisdiction to try the cause. The plea has no bearing as between the jurisdiction of the Court of Session and the Sheriff Court.

The general principles followed by the Court of Session in dealing with the plea of *forum non conveniens* may be applicable to some extent to the question as between one sheriffdom and another, but it is evident that the equitable considerations which warrant the plea as between different countries have comparatively small scope for exercise as between different sheriffdoms. Reference may, however, be made to the general principles laid down or applied in the following cases on the subject.

The presumption is that jurisdiction, if competent, will be exercised by the Court before which the action is brought, and the plea of *forum non conveniens* will not be sustained except upon strong grounds, *Parken v. Royal Exchange Assurance Co.*, 1846, 3 D. 365; 18 J. 147; *Longworth v. Hope*, 1865, 3 M. 1049; *Hamlyn v. Talisker Distillery Co.*, 1894, 21 R. (H.L.) 21; 31 S.L.R. 642;

Howden & Co. Ltd. v. Powell, etc., Steam Coal Co. Ltd., 1912, S.C. 920; 49 S.L.R. 605; 1 S.L.T. 357; *Hay v. Jackson & Co.*, 1911, S.C. 876; 48 S.L.R. 772; 2 S.L.T. 10; *Anderson & Co. v. Field, Ltd.*, 1910, 1 S.L.T. 401; *Montgomery v. Zarifi*, 1917, S.C. 627; 54 S.L.R. 562; 1917, 1 S.L.T. 321. In the case of foreign trusts the presumption is in favour of the exercise of the jurisdiction of the foreign Court, *Clements v. Macaulay*, 1866, 4 M. 583; 38 J. 309; *Brown v. Maxwell's Exrs.*, 1883, 10 R. 1235; 20 S.L.R. 818; *Martin v. Blair's Exrs.*, 1879, 7 R. 329; 17 S.L.R. 208; *Foster v. Foster's Trs.*, 1923, S.C. 212; 60 S.L.R. 155; 1922 S.L.T. 59. In questions of partnership the Court where the property, books, papers, etc., are situated may have the preference, *Sim v. Robinow*, 1892, 19 R. 665; 29 S.L.R. 585; *Adamson's Exrs. v. M'Taggart*, 1893, 20 R. 738; 30 S.L.R. 672; 1 S.L.T. 41. In other cases the material elements may be the *locus* of the cause of action, the residence of the parties and witnesses, and the law to be applied, *M'Lauchlin v. London and N.W. Railway Co.*, 1899, 7 S.L.T. 244; *Williamson v. N.E. Railway Co.*, 1884, 11 R. 596; 21 S.L.R. 421; *Lane v. Foulds*, 1903, 11 S.L.T. 118; *Powell v. Mackenzie*, 1900, 8 S.L.T. 182; *Low v. Low*, 1893, 1 S.L.T. 43; *Hine v. M'Dowell*, 1897, 5 S.L.T. 12. That proceedings involving the same question are pending in another Court is a material ground for sustaining the plea, *Ferguson v. Buchanan*, 1890, 18 R. 119; 28 S.L.R. 100; *Gemmell v. Emery*, 1905, 13 S.L.T. 490; *Huntly v. Brooks' Trs.*, 1901, 8 S.L.T. 399; *Okell v. Foden*, 1884, 11 R. 906; cf. *Rothfield v. Cohen*, 1919, 1 S.L.T. 138; and *Munio & Co. v. Anglo-American Nitrogen Co.*, 1917, 1 S.L.T. 24. In the Court of Session the sustaining of the plea of *forum non conveniens* results in dismissal of the action, *Atkinson & Wood v. Mackintosh*, 1905, 7 F. 598; 42 S.L.R. 461; 12 S.L.T. 856; but see *Foster v. Foster's Trs.*, *supra*. In the Sheriff Court the same result would follow if it were held that the case should be raised in a foreign Court, but otherwise the effect would generally be that the case would be remitted to the Sheriff Court in which it is held the action should be tried.

Transfer of Cause from Sheriff Court to Court of Session.

--The Sheriff may at any stage, on cause shown or *ex proprio motu*, remit to the Court of Session actions of aliment, provided that as between husband and wife they are actions of separation and aliment, adherence and aliment, or interim aliment, and actions for regulating the custody of children. Act of 1907, sec. 5, as amended by the Act of 1913.

A remit ought not to be made unless there is some special

difficulty in the particular case, *Dunbar v. Dunbar*, 1912, S.C. 19; 49 S.L.R. 16; 1911, 2 S.L.T. 349.

In addition to the power in the Sheriff to effect the transfer of a cause as above, there is a right of removal at the instance of the parties of certain causes specified in the statute from the Sheriff Court to the Court of Session. These are (1) actions relating to questions of heritable right and title; (2) actions relating to the right of succession to moveables; (3) actions of division of commonry, or division, or division and sale of common property—Act of 1907, sec. 5; (4) certain actions for the purpose of being tried by jury—Act of 1907, sec. 30, as amended by Act of 1913.

Transfer of Cause by Sheriff who has no Jurisdiction to Sheriff of another Sheriffdom.—A power is conferred on the Sheriff by the Act of 1907, intended to prevent want of jurisdiction being necessarily fatal to an action. When a plea of no jurisdiction is sustained, the Sheriff may, if he think proper, remit the cause to the Sheriff before whom he thinks the action should have been brought. Rule 21.

The interlocutor remitting, if by a Sheriff-Substitute, is appealable to the Sheriff, by leave, within seven days. Conditions as to costs may be imposed by the Sheriff. Rule 21.

If the cause is remitted the rule provides that "it shall thereafter proceed in all respects as if it had originally been there brought."

There is a special power in the Sheriff to remit a cause under the Workmen's Compensation Act, 1906, from the Court of the *locus* of the accident to any other Court in Scotland, England, or Ireland, which the Sheriff may hold to be more convenient, C.A.S., L, xiii., 4 and 5.

There is no power in the Sheriff either at common law or by statute to cure defective jurisdiction by remitting a cause to the Court of Session, nor would an appeal be operative to cure such defect, *Gillan v. Barony Parish Council*, 1898, 1 F. 183; 36 S.L.R. 135; 6 S.L.T. 169.

As to effect of transfer, under Rule 21, on arrestment on the dependence, see p. 75.

Exclusion and Limitation of the Exercise of Jurisdiction.
—Although there may be jurisdiction in the Sheriff Court to deal with a matter in general, considerations may be present in any particular case which exclude or limit the

exercise of the jurisdiction. Such considerations arise from the voluntary act of parties or from statutory enactment.

1. Voluntary exclusion of jurisdiction.

This arises where the parties select a *forum* for themselves to the exclusion of the Court to which they are subject, and usually takes the form of a reference or arbitration. The effect of an agreement to refer or arbitrate is to exclude the jurisdiction of the Court so far as regards the decision of the matter agreed to be referred, but it leaves the jurisdiction intact for the purpose of enabling the Court to grant its aid in carrying out the reference and pronouncing a decree, *Hamlyn & Co. v. Talisker Distillery Co.*, 1894, 21 R. (H.L.) 21; 31 S.L.R. 642; *Elderslie Steamship Co. v. Burrell*, 1895, 22 R. 389; 32 S.L.R. 328; 2 S.L.T. 499; *Johannesburg Municipal Council v. Stewart & Co.*, 1909, S.C. (H.L.) 53; 47 S.L.R. 20; 2 S.L.T. 313; *North British Railway Co. v. Newburgh Railway Co.*, 1911, S.C. 710; 48 S.L.R. 450; 1 S.L.T. 266; *Sanderson & Son v. Armour & Co.*, 1922, S.C. (H.L.) 117; 58 S.L.R. 355; 1922 S.L.T. 285.

2. Statutory interferences with jurisdiction.

The following are illustrations:—

(1) Vexatious actions. Where a party has habitually and persistently instituted vexatious legal proceedings against the same or different persons without any reasonable ground, the Lord Advocate may apply to the Inner House of the Court of Session for an order that no legal proceedings shall be instituted by such party without leave of the Lord Ordinary on the Bills. The order is advertised in the *Edinburgh Gazette*. Leave is to be granted only if the Lord Ordinary is satisfied that the proceedings to be allowed are not vexatious and that there is *primâ facie* ground for them. Vexatious Actions (Scotland) Act, 1898, 61 & 62 Vict. c. 35.

(2) Proceedings against a company in liquidation.

Where a company has been ordered to be wound up, no action or proceeding can be proceeded with or commenced against the Company except by leave of the Court, and subject to such terms as the Court may impose. Companies (Consolidation) Act, 1908, 8 Edw. VII. c. 69, sec. 142. This provision does not apply to voluntary liquidations.

An action of declarator of liability for debt and for payment of a dividend in a liquidation is competent in the Sheriff Court, *Lamberton v. Kelvindale Chemical Co. Ltd.*, 1910, 26 Sh. Ct. Rep. 123.

(3) Actions of damages in respect of public duty.

Various statutory enactments while not, strictly speaking, constituting interference with the jurisdiction of the Courts, restrict or exclude proceedings under the statutes in the particular matters in question.

In questions which arise under statute care should be taken to see whether the particular statute contains any provisions affecting jurisdiction, or the procedure to be followed in actions under it. Where a time limit imposed by statute expires on a Sunday, an action raised on the day following is too late, *M'Niven v. Glasgow Corporation*, 1920, S.C. 584; 57 S.L.R. 514; 1920, 2 S.L.T. 57. The following are the more important provisions of this nature:—

(a) Actions under the Poor Law (Scotland) Act, 1845, 8 & 9 Vict. c. 83.

Actions on account of anything done in the execution of this Act must be brought in the Sheriff Court. Every such action may be commenced only within three calendar months after the fact committed, and notice has to be given to the defender one month before the commencement of the action (sec. 86).

(b) Actions under the Public Health (Scotland) Act, 1897, 60 & 61 Vict. c. 38.

Actions or prosecutions against persons acting under this Act on account of any wrong done in or by any action, proceeding, or operation under the Act must be commenced within two months after the cause of action has arisen (sec. 166).

(c) Actions under the Summary Jurisdiction (Scotland) Act, 1908, 8 Edw. VII. c. 65.

Actions for damages against judges, clerks of Court, or public prosecutors in respect of any proceedings under the above Act must, unless a shorter period is fixed by special statute, be commenced within two months of the proceeding founded on (sec. 59).

(d) Actions against public authorities.

The Public Authorities Protection Act, 1893, 56 & 57 Vict. c. 61, applies to actions, prosecutions, or other proceedings against persons for acts done in pursuance or execution or intended execution of any Act of Parliament or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority, and provides that an action is not to lie or be instituted unless commenced within six months after the act, neglect, or default complained of, or in the case of a continuance of the injury or damage within six months after the ceasing thereof (sec. 1).

(4) Disputes under Friendly Societies Acts.

Disputes arising under the Friendly Societies Acts, 1896 and 1908, 59 & 60 Vict. c. 25, sec. 68, and 8 Edw. VII. c. 32, sec. 6, are to be decided in the manner directed by the rules of the Society and are not removable into any Court of law or restrainable by injunction.

tion, *Catt v. Wood*, 1910, 47 S.L.R. 907; *Macfarlane v. Perth Branch of Firemen's Friendly Society*, 1911, 27 Sh. Ct. Rep. 223; *Campbell v. Perth Branch of Firemen's Friendly Society*, 1912, 28 Sh. Ct. Rep. 135; *M'Gowan v. City of Glasgow Friendly Society*, 1913, S.C.; 50 S.L.R. 783; 2 S.L.T. 40; *Mooney v. Hibernians' Friendly Society*, 1915, 31 Sh. Ct. Rep. 110. Where the society acts in violation of its rules, the jurisdiction of the Court is not excluded, *M'Gowan v. City of Glasgow Friendly Society*, 1913, S.C. 991; 50 S.L.R. 783; 1913, 2 S.L.T. 40; and when a question has been settled in terms of the rules, the rights of parties may be enforced by the Court, *Collins v. Barrowfield United Oddfellows*, 1915, S.C. 190; 52 S.L.R. 388; 1914, 2 S.L.T. 401.

(5) Actions arising out of trade union contracts.

Certain trade union agreements, though not unlawful, are not enforceable in a Court of law, nor can damages be recovered for breach of them.

Trades Union Act, 1871, 34 & 35 Vict. c. 31, sec. 4; *M'Kernan v. United Operative Masons' Association*, 1874, 1 R. 453; 11 S.L.R. 219; *Shanks v. United Operative Masons' Association*, 1874, 1 R. 823; 11 S.L.R. 356; *Amalgamated Society of Railway Servants for Scotland v. Motherwell Branch*, 1880, 7 R. 867; 17 S.L.R. 607; *Aitken v. Associated Carpenters and Joiners of Scotland*, 1885, 12 R. 1206; 22 S.L.R. 796; *Wilkie v. King*, 1911, S.C. 1310; 48 S.L.R. 1057; 2 S.L.T. 206; *Wilson v. Scottish Typographical Association*, 1912, S.C. 534; 49 S.L.R. 397; 1 S.L.T. 203; *Shinwell v. National Sailors', etc., Union, etc.*, 1913, 2 S.L.T. 83; *M'Laren v. National Union of Dock Labourers, etc.*, 1918, S.C. 834; 55 S.L.R. 763; 1918, 2 S.L.T. 175; *Smith v. Scottish Typographical Association*, 1919, S.C. 43; 56 S.L.R. 46; 1918, 2 S.L.T. 250; *Rae v. Plate Glass Merchants' Association*, 1919, S.C. 426; 56 S.L.R. 315; 1919, 1 S.L.T. 228; *Johnston v. Aberdeen Master Plumbers' Association*, 1921, S.C. 62; 58 S.L.R. 47; 1920, 2 S.L.T. 390; *Drennan, etc., v. Associated Ironmoulders of Scotland*, 1921, S.C. 151; 58 S.L.R. 146; 1921, 1 S.L.T. 18.

(6) Actions against trade unions.

An action against a trade union or against members or officials on behalf of the union in respect of any tortious act alleged to have been committed by or on behalf of the trade union cannot be entertained by any Court.

Trades Dispute Act, 1906, 6 Edw. VII. c. 47, sec. 4; *Caldwell v. Glasgow, etc., Aerated Water, etc., Association*, 1910, 26 Sh. Ct. Rep. 94; *Winter v. United Society of Boilermakers, etc.*, 1910, 26 Sh. Ct. Rep. 350; *John Milligan & Co., Ltd. v. Ayr Harbour Trs.*, 1915, S.C. 937; 52 S.L.R. 748; 1915, 2 S.L.T. 69.

CHAPTER II.

ACTIONS COMPETENT IN THE SHERIFF COURT

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I. ACTIONS COMPETENT AS REGARDS SUBJECT-MATTER

THE classes of actions competent in the Sheriff Court as regards their subject-matter are the following :—

1. Actions relating to Moveables.— In all questions relating to moveable property, whether corporeal or incorporeal, whatever may be the value involved, the Sheriff has jurisdiction.

If a cause, competent in the Sheriff Court, does not exceed £50 in value, exclusive of interest and expenses, it cannot be brought in the Court of Session, but is competent only in the Sheriff Court. Sheriff Court Act, 1907, sec. 7.

The limit of value also applies to the right of appeal to the Court of Session, except in a summary cause in which, although the value does not exceed £50, an appeal is competent with leave of the Sheriff. Act of 1907, sec. 28, as amended by Act of 1913.

Difficulties as to the question of whether a cause does or does not exceed £50 in value arise most frequently in regard to the competency of appeal, and are dealt with on p. 223.

When an action not exceeding the prescribed limit is not com-

petent in the Sheriff Court it may be raised in the Court of Session, *e.g.* an action against such foreigners as are not subject to the jurisdiction of the Sheriff Court, *Strachan v. Pharmaceutical Society of Great Britain*, 1901, 8 S.L.T. 373.

An action for not more than £50 by a tenant against a landlord resident in England, for repairs on a house, was held incompetent in the Court of Session, in respect that it was competent in the Sheriff Court by virtue of sec. 6 (*d*) of the Act, *Allan v. Alexander's Trs.*, 1908, 16 S.L.T. 491. A similar decision was pronounced where jurisdiction having been constituted by arrestment of moveables within the sheriffdom, the action was thus made competent and the jurisdiction of the Court of Session thereby excluded, *Dickson & Walker v. John Mitchell & Co.*, 1910, S.C. 139; 47 S.L.R. 110; 1909, 2 S.L.T. 390. Where a defender owns heritage in Scotland, and is on that account subject to the jurisdiction of the Court of Session, it would appear to be incompetent to, or at all events not incumbent upon, the pursuer to found jurisdiction in the Sheriff Court by arrestment, and therefore an action against such a defender, though not exceeding £50, is competent in the Court of Session, *Pagan & Osborne v. Haig*, 1910, S.C. 341; 47 S.L.R. 440; 1 S.L.T. 122.

In various petitory actions the exercise of jurisdiction by the Sheriff has been affected by special statutory enactment. Such are the following:—

(1) Actions relating to the right of succession to moveables where the value of the subject in dispute exceeds £1000 may be remitted at the instance of either party to the Court of Session. Act, sec. 5.

(2) Claims by employees against their employers. This subject is dealt with on p. 48.

(3) Claims for salvage. By the Merchant Shipping Act, 1894, sec. 547 *et seq.*, the Sheriff, unless with the consent of parties, cannot entertain an action for salvage where the amount of the claim exceeds £300, or where the value of the property saved exceeds £1000; but see *Waterford Steam Boat Co. v. Ford Shipping Co.*, 1915, 2 S.L.T. 192. See as to summary procedure for recovery of salvage, *Thirtle v. Copin*, 1913, 29 Sh. Ct. Rep. 13; *Bain, etc., v. Strangeland*, 1920, 36 Sh. Ct. Rep. 250.

(4) Actions of damages in respect of wrongs done in the execution of the Poor Law (Scotland) Act, 1845, 8 & 9 Vict. c. 83, must be raised in the Sheriff Court. Sec. 86.

(5) Under the Public Health Act, 1897, claims for compensation for damage sustained by reason of the exercise of powers under the Act where the amount does not exceed £50 may be ascertained on summary application to the Sheriff. Sec. 164.

By sec. 4 of the Act of 1907 it is provided that the powers and

jurisdictions formerly competent to the High Court of Admiralty in Scotland, in all maritime causes and proceedings, including such as may apply to persons furth of Scotland, are to be competent to the Sheriffs, provided the defender shall, upon any legal ground of jurisdiction, be amenable to the jurisdiction of the Sheriff before whom such cause or proceeding may be raised. This appears to be re-enacting the effect of the Acts 2 Geo. IV. and 1 Will. IV. c. 69, sec. 22, and 1 & 2 Vict. c. 119, sec. 21, which transferred the functions of the Admiralty Courts to the Court of Session and the Sheriff Courts. See as to Admiralty jurisdiction, *Constant v. Christensen*, 1912, S.C. 1371; 50 S.L.R. 27; 2 S.L.T. 62.

The civil jurisdiction of the Sheriff does not cover actions for penalties in respect of contravention of statutory provisions, *Glasgow Goldsmiths Co. v. Mackenzie & Co.*, 1912, S.C. 992; 49 S.L.R. 748; 1 S.L.T. 498; 28 Sh. Ct. Rep. 27.

2. Actions relating to Heritage.—Excluding actions of adjudication and reduction, the jurisdiction of the Sheriff in matters relating to heritage is practically as extensive as that of the Court of Session. It embraces the following:—

(1) All questions relating to—

(a) Possession of heritable subjects.

Possessory rights, as opposed to absolute rights to heritage, could always be dealt with by the Sheriff. Such rights are based upon the state of possession for seven years previous to the dispute, but the Sheriff may now also entertain an action for determining the absolute right or title, and the distinction between possessory and absolute rights has ceased to have importance as regards jurisdiction.

(b) Nuisance or damage arising from the undue exercise of the right of property.

As to effect upon the Sheriff's jurisdiction of provisions as to nuisance contained in Police Acts, see *Steel v. Gourrock Comrs.*, 1872, 10 M. 954; 44 J. 526; and *Adam v. Alloa Comrs.*, 1874, 2 R. 143.

(c) Constitution and exercise of servitudes.

Questions under (b) and (c) were competent to the Sheriff under the Sheriff Courts Act, 1838, now repealed, and are merged in the actions referred to in class 6 below.

(d) Leases, rents, and generally all questions between landlord and tenant, including sequestrations, removings,

and ejections. Actions of declarator of irritancy and removing are expressly dealt with in the Act, sec. 5 (4). Removings and ejections are also expressly dealt with in the Act, secs. 34 to 38.

Sequestration for rent is competent in the Sheriff Court alone, *Duncan v. Lodijensky*, 1904, 6 F. 408; 41 S.L.R. 322; 11 S.L.T. 684.

The following forms of action have been held competent in the Sheriff Court:—

(a) To have a tenant ordained to stock a farm, *M'Dougall v. Buchanan*, 1867, 6 M. 120; 40 J. 67; *Macdonald v. Mackessack*, 1888, 16 R. 168; to furnish a shop, *Whitelaw v. Fulton*, 1871, 10 M. 27; 44 J. 37; to plenish a house, or for warrant to eject, *Wright v. Wightman*, 1875, 3 R. 68; 13 S.L.R. 29.

(b) For the inspection and repair of premises, *Dickson v. Graham*; 1877, 4 R. 717; 14 S.L.R. 471; *Lees v. Marr Typefoundry Co.*, 1877, 4 R. 1088; but see *MacLagan v. Marchbank*, 1911, 2 S.L.T. 184; 27 Sh. Ct. Rep. 282.

(c) For the appointment of a judicial manager on a farm deserted by the tenant, *Gibson v. Clark*, 1895, 23 R. 294; 33 S.L.R. 174; 3 S.L.T. 197.

(d) For remit to man of skill to report on work done by contractors and for authority to complete work, *Kilmarnock Mags. v. Reid*, 1897, 24 R. 388; 34 S.L.R. 286; 4 S.L.T. 279; but see otherwise, *Sutherland v. Squair*, 1898, 25 R. 656; 35 S.L.R. 512; 5 S.L.T. 336; *Jenkins v. Gascoigne*, 1907, S.C. 1189; 44 S.L.R. 861; 15 S.L.T. 269; *M'Farlane v. Crawford*, 1919, 35 Sh. Ct. Rep. 78.

(e) Interdicts.

As to whether a declarator or an interdict is the proper form of action, see *Cronin v. Sutherland*, 1899, 2 F. 217; 37 S.L.R. 160. An action for interdict should be brought in the sheriffdom where the wrong is to be prevented, *Home Drummond v. Thomson*, 1907, 15 S.L.T. 524. Act, sec. 6 (e).

(2) Actions for erection of march fences, straightening of marches, and division of runrig lands.

Acts 1661, c. 41; and 1669, c. 17. *Strang v. Steuart*, 1864, 2 M. 1015; 36 J. 510; 4 M. (H.L.) 5; 38 J. 223; *Paterson v. Macdonald*, 1880, 7 R. 958; 17 S.L.R. 659 (reconstruction of march fence); *Earl of Kintore v. Kintore's Trs.*, 1886, 13 R. 997; 23 S.L.R. 715 (altering line of march); *Secker v. Cameron*, 1914, S.C. 354; 51 S.L.R. 354; 1914, 1 S.L.T. 214. The two latter actions must be brought in the Sheriff Court. The first mentioned may

be brought in the Court of Session, but is usually brought in the Sheriff Court.

(3) Actions of constitution and adjudication *contra hereditatem jacentem*.

Actions of constitution and adjudication are in practice usually brought in the Court of Session. Other adjudicatory actions are, it is thought, competent in that Court alone.

(4) Actions of maills and duties, and poinding of the ground.

(5) Actions of division of commonry, and of division, or division and sale, of common property. Sec. 5 (3).

The Act of 1695 concerning the division of commonries is to be construed as applying to the Sheriff Court. Sec. 5 (3). *Vincent v. Anderson*, 1920, 36 Sh. Ct. Rep. 182.

(6) Actions relating to questions of heritable right or title, including actions of declarator of irritancy and removing. Act, sec. 5 (4).

Actions of adjudication (except so far as competent at the passing of the Act) and actions of reduction are excluded from this rule. Act, sec. 5 (4).

In actions falling under the headings (5) and (6) *supra*, when the value of the subject in dispute exceeds £50 by the year, or £1000, either party may, within six days after the closing of the record, have the cause remitted to the Court of Session. Act, sec. 5 (a) and (c). *Goudie v. Goudie*, 1903, 11 S.L.T. 27; *Bowie v. M. of Ailsa*, 1887, 14 R. 649; 24 S.L.R. 456; *Muirhead v. Gilmour*, 1909, 46 S.L.R. 425; 1 S.L.T. 235; *Anderson v. M'Gowan*, 1911, S.C. 441; 48 S.L.R. 417; 1 S.L.T. 173; *Nicholson v. Glasgow Blind Asylum*, 1911, S.C. 391; 48 S.L.R. 272; 1 S.L.T. 37. Such actions when raised in the Sheriff Court are to be raised in the Court of the jurisdiction and district where the property forming the subject in dispute is situated. Act, sec. 5. The same rule would apply to all the actions before mentioned as relating to heritage, except such as are for payment of money which, although the liability might arise out of heritage, would be competently brought in any Court which has jurisdiction over the defender.

Section 5 (4) extended the jurisdiction of the Sheriff to questions of competition of heritable right. Questions of personal liability arising out of heritage were always competent before the Sheriff.

By the Feudal Casualties (Scotland) Act, 1914, sec. 22, subject

to the provisions of the Sheriff Court Acts, 1907 and 1913, proceedings for the recovery or redemption of casualties, or for the fixing or recovery of compensation therefor, may be raised either in the Court of Session or in the Sheriff Court.

The ordinary common law jurisdiction of the Sheriff will not readily be held to be excluded by reason of special provisions in Police Acts, *Campbell v. Craig*, 1911, S.C. 516; 48 S.L.R. 421; 1 S.L.T. 106.

Several of the actions before enumerated were competent either at common law or by statute previous to the Act of 1907, and are not expressly mentioned in that Act. Section 5 provides that nothing contained in the statute is to derogate from any jurisdiction powers or authority presently possessed or in use to be exercised by the Sheriffs of Scotland.

(7) There is also statutory jurisdiction in the Sheriff Court, with various rights of appeal, in reference to the following matters affecting heritage:—

(a) Proceedings in regard to heritable securities under the Heritable Securities (Scotland) Act, 1894.

(b) Service of heirs to heritage under the various Conveyancing Acts.

(c) Applications regarding entails under the various Entail Acts, *e.g.* Entail (Scotland) Act, 1914.

(d) Granting powers in relation to heritage in the case of estates on which a judicial factor has been appointed by the Sheriff.

(e) Proceedings as to churches, manses, glebes, etc., under the Ecclesiastical Buildings and Glebes (Scotland) Act, 1868.

(f) Proceedings as to lands compulsorily taken under the Lands Clauses Consolidation Act, 1845.

(g) Proceedings for recovery or redemption of casualties, or for compensation for their extinction. Feudal Casualties (Scotland) Act, 1914.

In such matters as are above referred to, the powers of the Sheriff and the competency of the proceedings are determined by the statutes which authorise the respective proceedings.

3. Declarator under Intestate Husband's Estate (Scot-

land) Acts, 1911 and 1919.—The Intestate Husband's Estate (Scotland) Act, 1919 (9 Geo. v. c. 9), introduced a procedure to enable the rights conferred by the Intestate Husband's Estates (Scotland) Act, 1911, to be made effectual. By Section 1 a widow entitled to the whole or part of the estate of her deceased husband in terms of the Act of 1911 may present a summary application in the form of the Schedule annexed to the Act, and obtain a decree or a charge upon the heritable property for the sum to which she is entitled. The application must be made in the Sheriff Court of the county in which the husband was domiciled at the time of his death, or, if the county in which he was so domiciled is uncertain, in the Sheriff Court of the Lothians and Peebles at Edinburgh.

4. Consistorial Causes.—By the Act of 1907, sec. 5 (2), as amended by the Act of 1913, the jurisdiction of the Sheriff extends to and includes—

(1) Actions of aliment, provided that as between husband and wife they are actions of (a) separation and aliment; (b) adherence and aliment; or (c) interim aliment; and

(2) Actions for regulating the custody of children.

Actions of aliment between husband and wife were always competent in the Sheriff Court as a temporary remedy until the rights of parties could be determined by application to the Court of Session, *Smith v. Smith*, 1874, 1 R. 1010; 11 S.L.R. 581; *M'Donald v. M'Donald*, 1875, 2 R. 705; 12 S.L.R. 471; *Hay v. Hay*, 1882, 9 R. 667; 19 S.L.R. 442; *Macleod v. Macleod*, 1893, 1 S.L.T. 274, 366; *Young v. Young's Trs.*, 1906, 14 S.L.T. 123.

The terms of the Act of 1907, sec. 5 (2), gave rise to doubt as to whether the Sheriff could any longer grant an interim award of aliment as between husband and wife except as incidental to an application in his Court for separation and aliment, and also as to whether an award of aliment of a permanent nature, *i.e.* so long as the defender should refuse to receive and maintain his wife or so long as she refused, on sufficient ground, to live with him, could be granted in the Sheriff Court. Conflicting views on this subject were expressed in *Low v. Low*, 1908, 16 S.L.T. 352;

M'Donald v. M'Donald, 1908, 24 Sh. Ct. Rep. 271; *Samuel v. Samuel*, 1909, 1 S.L.T. 245; 25 Sh. Ct. Rep. 99; *Macfarlane v. Macfarlane*, 1910, 26 Sh. Ct. Rep. 48; *Scott v. Scott*, 1911, 27 Sh. Ct. Rep. 5. The difficulties were removed by the terms of the amending Act of 1913. Actions for interim aliment are competent, while actions of aliment of a permanent nature between husband and wife are not competent, unless they are also actions of separation or of adherence.

The above-mentioned actions may be remitted by the Sheriff at any stage to the Court of Session on cause shown or *ex proprio motu*. Act of 1907, sec. 5, as amended by Act of 1913.

Remit will only be justified by grounds special to the case in question, *Dunbar v. Dunbar*, 1912, S.C. 19; 49 S.L.R. 16; 1911, 2 S.L.T. 349.

Under the provision as to regulating the custody of children contained in the Act of 1907, difference of opinion existed in regard to the extent of the Sheriff's powers. See *A. B. v. C. D.*, 1910, 1 S.L.T. 405; *Naysmith v. Naysmith*, 1910, 2 S.L.T. 135; 26 Sh. Ct. Rep. 319; *Yuill v. Taig*, 1911, 27 Sh. Ct. Rep. 195; *Mercer v. Mercer*, 1915, 31 Sh. Ct. Rep. 115. The matter has been clarified by the decision in *Murray v. Forsyth*, 1917, S.C. 721; 54 S.L.R. 558; 1917, 2 S.L.T. 83. See page 181.

This extension of jurisdiction will not interfere with the Sheriff's jurisdiction—

(a) To regulate the interim custody of children, pending an application to the Court of Session, *Brand v. Shaws*, 1888, 15 R. 449; 25 S.L.R. 332 (petition by mother for custody of illegitimate child); *Hood v. Hood*, 1871, 9 M. 449; 43 J. 215.

(b) To make an order as to the custody of, or right of access to, an infant under the Guardianship of Infants Act, 1886, 49 & 50 Vict. c. 27, secs. 5 and 9.

(c) Under the Custody of Children Act, 1891, 54 & 55 Vict. c. 3, *Mackenzie v. Keillor*, 1892, 19 R. 963; 29 S.L.R. 829; *Gillan v. Barony Parish Council*, 1898, 1 F. 183; 36 S.L.R. 135; 6 S.L.T. 169; *Murray v. Forsyth*, *supra*.

(d) To grant and recall orders to protect the property of a wife deserted by her husband. Conjugal Rights (Scotland) Amendment Act, 1874, 37 & 38 Vict. c. 31, sec. 2.

(e) To dispense with the consent of a husband to his wife's deeds, Married Women's Property (Scotland) Act, 1881, 44 & 45 Vict. c. 21, sec. 5; *J. B. v. A. D.*, 1910, 26 Sh. Ct. Rep. 50. Such consent is not now required unless the wife is in minority and the

husband is of full age and not subject to any legal incapacity. (Married Women's Property (Scotland) Act, 1920, secs. 1 and 2.)

An application by a husband for removal of his wife from his house is competent in the Sheriff Court as a common law application, *Maclure v. Maclure*, 1911, S.C. 200; 48 S.L.R. 247; 1 S.L.T. 84.

II. ACTIONS COMPETENT AS REGARDS FORM

The nature of the remedies competent in the Sheriff Court are the following:—

1. Petitory Actions—*e.g.* actions for payment, for delivery, for implement, or for interdict.

The three actions last named are also described as actions *ad facta præstanda* and involve a special form of decree and peculiar method of enforcement.

2. Possessory Actions.—Possessory remedies, *e.g.* interdicts, removings, and mails and duties.

The distinction between petitory and possessory remedies is now practically of no importance from the point of view of jurisdiction. It may have a bearing upon the question of whether or not a judgment constitutes *res judicata*.

3. Declarators.—Actions of declarator. Act, sec. 5 (1).

These are actions concluding for a decree simply affirming or denying the existence of a right. While such actions generally contain operative conclusions, this is not essential so long as the question submitted for decision determines an actual right, and is not merely of an academic or hypothetical nature, *Rothfield v. North British Railway Co.*, 1920, S.C. 805; 57 S.L.R. 661; 1920, 2 S.L.T. 269; *North British Railway Co. v. Birrell's Trs.*, 1918, S.C. (H.L.) 33; 55 S.L.R. 102; 1917, 2 S.L.T. 271 (declarator of negative); *Grieve v. Kilmarnock Motor Co. Ltd.*, 1923, S.C. 491; 60 S.L.R. 290; 1923 S.L.T. 308 (jurisdiction of Sheriff in declarator as to company resolution).

From the enactment making actions of declarator in the Sheriff Court competent are expressly excepted—

(a) Declarators of marriage or nullity of marriage.

(b) Actions the direct or main object of which is to determine the personal status of individuals. Act, sec. 5 (1).

Actions of proving the tenor while in the form of declarators

involve the exercise of the *nobile officium* of the Court of Session, and have not been made competent in the Sheriff Court by the Act of 1907. *Dunbar v. Scottish County Investment Co. Ltd.*, 1920, S.C. 210; 57 S.L.R. 179; 1920, 1 S.L.T. 136.

4. Adjudications.—The only action of adjudication competent in the Sheriff Court appears to be an adjudication of an ancestor's estate where the heir renounces the succession. Such actions, however, are usually raised in the Court of Session.

Actions of constitution are competent in the Sheriff Court, *Anderson v. Fraser*, 1910, 26 Sh. Ct. Rep. 130.

5. Suspensions.—The suspensions competent in the Sheriff Court are suspensions of charges or threatened charges upon Sheriff Court decrees, or on extracts of bonds, bills, contracts, or other obligations, where the debt, exclusive of interest and expenses, does not exceed £50. Act, sec. 5 (5). This provision leaves competent in the Court of Session a charge on a decree of that Court though the amount is under the limit.

Suspensions of charges on Sheriff Court decrees for amounts not exceeding £50 are now incompetent in the Court of Session, *Wilsons and Clyde Coal Co. Ltd. v. Cairnduff*, 1911, S.C. 647; 48 S.L.R. 500; 1 S.L.T. 369; see also *Bryson v. Belhaven Engineering, etc., Ltd.*, 1908, 15 S.L.T. 1043.

Suspension would still be competent in the Court of Session of a charge that was fundamentally illegal, irrespective of the amount, *Aitchison v. M'Donald*, 1911, S.C. 174; 48 S.L.R. 185; 1910, 2 S.L.T. 413. *Brown & Critchley v. Decorative Art Journals Co. Ltd.*, 1922, S.C. 192; 59 S.L.R. 241; 1922 S.L.T. 117.

CHAPTER III.

ACTIONS INCOMPETENT IN THE SHERIFF COURT

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I. ACTIONS INCOMPETENT AS REGARDS SUBJECT-MATTER

Actions relating to Status.—Consistorial actions, with the exception of actions of separation and actions of adherence, are incompetent in the Sheriff Court.

Consistorial causes are the following:—Actions of declarator of marriage, of nullity of marriage, of legitimacy and bastardy, of separation *a mensa et thoro*, of divorce, of adherence, of putting to silence, and aliment between husband and wife instituted in the Court of Session. 2 Geo. iv. and 1 Will. iv. c. 69, secs. 33 and 36; Conjugal Rights (Scotland) Amendment Act, 1861, 24 & 25 Vict. c. 86, secs. 15 and 19; 13 & 14 Vict. c. 36, sec. 16.

But cases have been held competent in the Sheriff Court where—

(a) Although the question of marriage was raised, the case could be decided apart from that question, *Wright v. Sharp*, 1880, 7 R. 460; 17 S.L.R. 293.

(b) Proof of irregular marriage was incidental to ascertaining a pauper's settlement, *Macdonald v. Mackenzie*, 1891, 18 R. 502; 28 S.L.R. 404. See question as to whether a Sheriff can determine the constitution of a marriage by habit and repute in order to adjudicate on a claim under the Workmen's Compensation Act, *Wallace v. Fife Coal Co.*, 1909, S.C. 682; 46 S.L.R. 727; 1 S.L.T. 509.

(c) Proof of illegitimacy was incidental to claim under Workmen's Compensation Act, *Johnstone v. Spencer & Co.*, 1908, S.C. 1015; 45 S.L.R. 802; 16 S.L.T. 182.

II. ACTIONS INCOMPETENT AS REGARDS FORM

1. Actions of Reduction are incompetent in the Sheriff Court. There are, however, the following qualifications to this rule:—

(1) A conclusion for reduction does not render an action incompetent if the prayer can be granted without decree of reduction, *Moroney & Co. v. Muir & Sons*, 1867, 6 M. 7; 5 S.L.R. 11.

(2) Under the Bankruptcy (Scotland) Act, 1913, sec. 8, deeds made void by that Act, and voidable alienations of property by insolvents, may be set aside either by way of action or exception in the Sheriff Court or in the Court of Session. As to the corresponding jurisdiction under the Bankruptcy Acts, 1856 and 1857, see *M'Laren's Tr. v. National Bank*, 1897, 24 R. 920; 34 S.L.R. 692; 5 S.L.T. 40; *Dickson v. Murray*, 1866, 4 M. 797; 38 J. 423; *Brown's Trs. v. Fraser*, 1870, 8 M. 820; 42 J. 479.

(3) Objections to a deed or writing founded on in an action may be stated and maintained by way of exception, without the necessity of bringing a reduction. Rule 50 is in the following terms:—"When a deed or writing is founded on by any party in a cause, all objections thereto may be stated and maintained by way of exception without the necessity of bringing a reduction thereof."

This rule has been held not to apply to objections stated by a defender to the validity of a will on the ground that it had been impetrated by fraud, *Donald v. Donald*, 1913, S.C. 274; 50 S.L.R. 155; 2 S.L.T. 436. The general principle was laid down in that case that the object of the provision was to prevent unnecessary procedure when adminicles of evidence put forward were challenged, *e.g.* a receipt, and where the decision would determine the validity effectively without having recourse to a reduction.

Where a defender took exception to a lease founded on against him and averred that he was truly the proprietor, the Court held that an action of declarator and reduction was necessary, and that the defence could not be tried under this rule, *Duke of Argyll v. Muir*, 1910, S.C. 96; 47 S.L.R. 67; 1909, 2 S.L.T. 347.

The rule does not apply to a Sheriff Court decree *in foro*, *Leggat Brothers v. Gray*, 1912, S.C. 230; 49 S.L.R. 189; 1 S.L.T. 49.

Where objection by way of exception is stated, and where an action of reduction would be competent, the objector may be required to find caution or make consignment. Rule 51.

The provision of sec. 11 of the Act of 1877 corresponding to rule 50 of the Act of 1907 was held to apply to—

(a) A submission and award, *Nivison v. Howat*, 1883, 11 R.

182; 21 S.L.R. 104. See also *Wilson v. Glasgow Tramways Co.*, 1878, 5 R. 981; 15 S.L.R. 656; *M'Lauchlan & Co. v. Morrison*, 1902, 18 Sh. Ct. Rep. 206 (decret arbitral). In *Sundt & Co. v. Watson*, 1915, 31 Sh. Ct. Rep. 156, it was held that a decret arbitral might be set aside *ope exceptionis* under rule 50 of the Act of 1907.

(b) An execution of a peace warning, *Scott v. Cook*, 1896, 24 S.L.R. 34.

(c) A probate of an English will, *Roberts v. Fettes*, 1901, 10 S.L.T. 319; 18 Sh. Ct. Rep. 290.

(d) Doubtful if it applies to a decree *ex facie* regular, *Neil v. M'Nair*, 1901, 3 F. (J.C.) 85; 38 S.L.R. 804; 9 S.L.T. 59. See also *Dunbar v. Dempster*, 1892, 8 Sh. Ct. Rep. 332.

This convenient rule of pleading must be so exercised as not to prejudice the opposite party; facts which would justify reduction must be averred on record, *Oswald v. Fairs*, 1911, S.C. 257; 48 S.L.R. 279; 1 S.L.T. 114.

2. Actions of Adjudication.

There is the exception of an adjudication against a deceased ancestor's estate.

3. Actions inferring Appeal to the Nobile officium, or involving Appellate Jurisdiction.

There is no *nobile officium* in the Sheriff, and at common law there is no appellate jurisdiction in the Sheriff Court; but various statutes have from time to time conferred upon the Sheriff a jurisdiction similar in kind to that exercised by the Supreme Court, only limited to the matter expressly dealt with.

The following actions have been held incompetent in the Sheriff Court:—

(a) To ordain an arbiter to execute a deed of devolution, *Forbes v. Underwood*, 1886, 13 R. 465; 23 S.L.R. 324; overruling *Sinclair v. Fraser*, 1884, 11 R. 1139; 21 S.L.R. 768.

(b) Interdict of diligence when equivalent to a suspension, *Thom v. North British Bank*, 1848, 10 D. 1254; 20 J. 459.

(c) Interdict of a threatened inhibition, *Beattie v. Pratt*, 1880, 7 R. 1171; 17 S.L.R. 796.

(d) Interdict of a poinding of the ground by a tenant who had already opposed the decree, as being virtually a suspension, *Crawford v. Scottish Savings, etc., Society*, 1885, 12 R. 1033; 22 S.L.R. 684; but see *Gomm v. M'Kellar*, 1895, 11 Sh. Ct. Rep. 97.

The Sheriff may, however, grant interdict against a poinding for which he has himself granted warrant, *Jack v. Waddell's Trs.*, 1918, S.C. 73; 55 S.L.R. 75; 1917, 2 S.L.T. 235; *M'Callum v. Cohen*, 1916, 32 Sh. Ct. Rep. 39.

(e) Action for delivery against a judicial factor on grounds impugning the management of the estate, *Hallpenny v. Howden*, 1894, 21 R. 945; 31 S.L.R. 782; 2 S.L.T. 121.

(f) Question raised as to the Sheriff's power to control the use of buildings by a School Board, *Hunter v. Lochgilphead School Board*, 1886, 14 R. 135; 24 S.L.R. 140.

(g) Application for decree conform to foreign judgment, *O'Connor v. Erskine*, 1906, 22 Sh. Ct. Rep. 58, *Stoddart v. Hotchkiss*, 1917, 33 Sh. Ct. Rep. 60.

An application to disinter a body is competent in the Sheriff Court, *Mitchell*, 1893, 20 R. 902; 30 S.L.R. 801.

As to actions of proving the tenor, see p. 19.

There have been conferred on the Sheriff by various statutes, powers and jurisdiction of a peculiar nature, *e.g.*:—

(1) Elections (Scotland) Corrupt and Illegal Practices Act, 1890, 53 & 54 Vict. c. 55.—Under this Act the Sheriff, but not the Sheriff-Substitute, is empowered to try election petitions (sec. 35). The procedure is regulated by C.A.S., L, x. *Brown v. Gibson*, 1910, 26 Sh. Ct. Rep. 65.

(2) Presumption of Death.—Where a person has disappeared for seven years, and the value of his estate in Scotland does not exceed £500, the Sheriff of the county in which the estate is situated has jurisdiction to find the date of presumed death, under the Presumption of Life Limitation (Scotland) Act, 1891, 54 & 55 Vict. c. 29.

(3) Appointment of Arbiters and Oversman.—The Sheriff has power to appoint arbiters where there has been an agreement to refer, but arbiters are not named; and also to appoint an oversman in the event of the arbiters failing to agree in a nomination, under the Arbitration (Scotland) Act, 1894, 57 & 58 Vict. c. 13.

United Creameries Co. Ltd. v. Boyd & Co., 1912, S.C. 617; 49 S.L.R. 460; 1 S.L.T. 297; *Ross v. Ross*, 1920, S.C. 530; 57 S.L.R. 461; 1920, 2 S.L.T. 4.

(4) Under Finance Act, 1894.—In estates not exceeding £10,000 there is appeal to the Sheriff against the decision of the Commissioners of Inland Revenue under the Finance Act, 1894, 57 & 58 Vict. c. 30, sec. 10. See as to procedure, C.A.S., C, viii.; and as to appeal, Finance Act, 1896, 59 & 60 Vict. c. 28, sec. 22.

(5) **Arbitration under the Workmen's Compensation Act, 1906**, 6 Edw. VII. c. 58.—This statutory arbitration has peculiar features of procedure under the above statute and C.A.S., L, xiii.

(6) **Under Agricultural Holdings Act, 1923**, 13 & 14 Geo. v. c. 10, sec. 16 (2), Sched. II. Rule 9.—An arbiter under this Act may obtain the opinion of the Sheriff on questions of law arising in the course of the arbitration by stated case.

The Sheriff's opinion on the case submitted must be applied by the arbiter, *Mitchell-Gill v. Buchan*, 1921, S.C. 390; 58 S.L.R. 371; 1921, 1 S.L.T. 197.

(7) **Housing and Town Planning Act, 1909**, 9 Edw. VII. c. 44; C.A.S., L, xiv.—An appeal to the Sheriff is competent against orders of the local authority, *Kirkpatrick v. Maxwelltown Town Council*, 1912, S.C. 288; 49 S.L.R. 261; 1 S.L.T. 65; *Johnston's Trs. v. Glasgow Corporation*, 1912, S.C. 300; 49 S.L.R. 269; 1 S.L.T. 71; *Summerlee Iron Co. Ltd. v. Musselburgh Town Council*, 1910, 26 Sh. Ct. Rep. 334. But see *Sharp v. Magistrates of Edinburgh*, 1913, 1 S.L.T. 280. See also *Dunfermline District Committee v. Sligo*, 1923 S.L.T. (Sh. Ct.) 14.

(8) **Under the Finance Act, 1910**, 10 Edw. VII. c. 8, sec. 33.—There is an appeal to the Sheriff against the finding of the Commissioners when the total or site value of the property in respect of which the dispute arises does not exceed £500. The procedure is regulated by the C.A.S., J, ii. But see alteration on above section by Finance Act, 1920, sec. 57.

(9) **Various Appellate Powers conferred by Statute**, *e.g.*—

(a) A large variety of cases in which it is competent for the Sheriff to review the deliverances of public bodies—*e.g.* town councils—under various statutes. *E.g. Aberdeen Cemetery Co. Ltd. v. Clapperton, etc.*, 1919, 35 Sh. Ct. Rep. 102.

(b) Appellate proceedings under the Bankruptcy statutes.

(c) Administrative and judicial powers conferred on the Sheriff by special statutes, *e.g.* appointment of judicial factors.

All proceedings by virtue of the before-mentioned statutory powers either fall under the class of summary applications or they are conducted under the special procedure prescribed by the statutes under which they are brought.

III. ACTION INCOMPETENT AS REGARDS THE DEFENDER

Action against the Crown.—The Crown is subject to the jurisdiction of the Supreme Court alone.

Somerville v. Lord Advocate, 1893, 20 R. 1050; 30 S.L.R. 868;

1 S.L.T. 172; *Helensburgh Magistrates v. Brock*, 1905, 13 S.L.T. 98; Court of Exchequer Act, 1856, 19 & 20 Vict. c. 56. There is the exception above referred to of a limited jurisdiction in the Sheriff under the various Finance Acts.

No person is exempt from the jurisdiction of the Sheriff Court on account of privilege, by reason of being a member of the College of Justice. Act of 1907, sec. 10, re-enacting sec. 48 of the Sheriff Courts Act of 1853.

CHAPTER IV.

JURISDICTION AS REGARDS DEFENDERS

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IT is not only necessary that the remedy sought should be one which the Sheriff can competently give; it is also necessary that he have jurisdiction over the party called as defender.

This jurisdiction is based upon the geographical limits of the sheriffdom, and arises either from the personal presence of the defender within these limits, or from the subject-matter of the dispute which is submitted to the Court being within these limits. In the latter case, under certain circumstances, the law holds the parties concerned, though geographically beyond the sheriffdom, subject to its jurisdiction.

The Sheriff's jurisdiction, considered geographically, extends to, and includes, all navigable rivers, ports, harbours, creeks, shores, and anchoring grounds in or adjoining the sheriffdom. Act, sec. 4.

Where sheriffdoms are separated by a river, firth, or estuary, the Sheriffs on either side have concurrent jurisdiction over the intervening space occupied by water. Act, sec. 4.

Previous to the Act of 1907, when a Sheriff held he had no jurisdiction to entertain an action raised before him, his only course was to dismiss it, leaving the pursuer to raise a new action

in the proper *forum*. That result may still follow the sustaining of a plea of no jurisdiction; but the Sheriff may, if he think proper, and upon conditions as to expenses, instead of dismissing the action, remit it to the Sheriff before whom it appears to him it should have been brought. Rule 21.

Confusion is often caused by the use of the term jurisdiction indiscriminately in a geographical and a legal sense. In the Act of 1907, sec. 6, the term is used for the most part in its geographical sense.

Jurisdiction as regards the defender may arise in one or other of the following ways:—

I. RESIDENCE—*Ratione Domicilii*

The Act of 1907, sec. 6 (a), as amended by the Act of 1913, provides that any action competent in the Sheriff Court may be brought within the jurisdiction of the Sheriff “where the defender (or when there are several defenders over each of whom a Sheriff Court has jurisdiction in terms of this Act where one of them) resides within the jurisdiction, or having resided there for at least forty days, has ceased to reside there for less than forty days, and has no known residence in Scotland.”

The provision of the 1907 Act, which has been made more intelligible by the alteration effected by the Act of 1913, is apparently, except as regards the words within brackets, which introduced a new feature, declaratory of the previously existing common law and practice in regard to the residence necessary to found jurisdiction.

The ordinary rules may be summarised as follows, viz. :—

(a) Residence of the defender within the sheriffdom for forty days, though there may be breaks in the residence, is sufficient.

(b) Residence for a less period is sufficient, if there is *animus remanendi* on the part of the defender, as would be shown by his taking up house.

(c) When jurisdiction has been founded by residence of forty days duration, it will remain for forty days after

the defender has removed from the sherifffdom, unless the defender has become subject to the jurisdiction of another sherifffdom. The jurisdiction of the one Sheriff is lost and the jurisdiction of the other Sheriff begins on the defender taking up his new residence *animo remanendi*.

(d) In the case of a foreigner, the jurisdiction acquired by residence of forty days ceases on his leaving the country.

Ferguson & Co. v. M'Coll, 1897, 14 Sh. Ct. Rep. 107; *Mowbray v. Bruce*, 1899, 15 Sh. Ct. Rep. 283; *Corstorphine v. Kasten*, 1898, 1 F. 287; 36 S.L.R. 174; 6 S.L.T. 238; *Buchan v. Grimaldi*, 1905, 7 F. 917; 42 S.L.R. 706; 13 S.L.T. 229; *Watt v. Watt*, 1902, 9 S.L.T. 400; *Colley v. Cameron*, 1902, 9 S.L.T. 462; *Tasker v. Grieve*, 1905, 8 F. 46; 43 S.L.R. 42; 13 S.L.T. 447; *Callander v. Pollock*, 1906, 22 Sh. Ct. Rep. 171; *Morrison v. Vallance's Exrs.*, 1907, S.C. 999; 44 S.L.R. 790; 15 S.L.T. 206; *Haining v. Bell*, 1904, 21 Sh. Ct. Rep. 83; *Walter v. Campbell*, 1907, 15 S.L.T. 412; *Bald v. Dawson*, 1911, 2 S.L.T. 459; *M'Lardy & Co. v. Irvine*, 1911, 27 Sh. Ct. Rep. 94; *Arnott v. Peden*, 1915, 31 Sh. Ct. Rep. 288; *Croft v. Croft*, 1923 S.L.T. (Sh. Ct.) 100; 29 Sh. Ct. Rep. 80; *Mitchell*, 1913, 29 Sh. Ct. Rep. 289 (Englishman leaving sherifffdom).

As to jurisdiction in petition for sequestration see *Gairdner v. M'Arthur*, 1918, 56 S.L.R. 20; 1918, 2 S.L.T. 123; *Weinschel*, 1916, 2 S.L.T. 91 and 205; *Central Motor Engineering Co. v. Galbraith*, 1918, S.C. 755; 55 S.L.R. 702; 1918, 2 S.L.T. 175.

Where there are several defenders, residence of one of them within the jurisdiction is sufficient to found jurisdiction for the action against the whole of them, provided the other defenders are subject to the jurisdiction of a Sheriff Court.

Act of 1907, sec. 6 (a). Act of 1913, sec. 3; Sched. I.

A case brought in the Court of the domicile of one of the defenders may be transferred by the Sheriff to any other Court having jurisdiction over any of them. Rule 19.

Wives and minors are, as a rule, subject to the jurisdiction constituted by the residence of the husband or father respectively. Absence of a minor from his father's house to attend college was held not to cause loss of domicile, *Steel v. Lindsay*, 1881, 9 R. 160; 19 S.L.R. 134.

Sailors when on shore, and soldiers when off duty, are subject to the jurisdiction of the sherifffdom in which is situated the house they occupy, for however short a period.

See as to provisions of the Army Act, 1881, 44 & 45 Vict. c. 58,

sec. 145, in regard to proceedings against a soldier under orders for service beyond the seas, *M'Kinnon v. M'Quillan*, 1912, 28 Sh. Ct. Rep. 268.

The domicile of a deceased husband within the sheriffdom gives jurisdiction in an application by a widow for declarator and payment under the Intestate Husband's Estate (Scotland) Act, 1919.

II. ARISING OUT OF CONTRACT—*Ratione Contractus*

This jurisdiction arises in an action relating to "a contract the place of execution, or performance, of which is within the jurisdiction," and when "the defender is personally cited there." Sec. 6 (f).

What is meant is no doubt that the citation must be "within the sheriffdom."

Pirie & Sons v. Warden, 1867, 5 M. 497; 39 J. 217; *Bird v. Brown*, 1887, 25 S.L.R. 1 (trustee on sequestrated estate of firm in Stirling but resident in Glasgow not subject to jurisdiction of Stirling Sheriff Court); *Maxwell v. Horwood's Trs.*, 1902, 4 F. 489; 39 S.L.R. 341; 9 S.L.T. 420 (ownership of heritage does not render personal citation unnecessary), but see Act, secs. 5 and 6, and pp. 13 and 15; *Robertson v. Neely*, 1895, 12 Sh. Ct. Rep. 182 (repetition of price of horse); *Goodall v. Robb*, 1901, 17 Sh. Ct. Rep. 162; *Hutchison v. Hutchison*, 1912, 1 S.L.T. 219.

Citation by post does not constitute personal service in cases in which that is an element in the constitution of jurisdiction, *Bird v. Brown*, 1887, 25 S.L.R. 1; *Davidson v. Gourlay*, 1906, 14 S.L.T. 112; 22 Sh. Ct. Rep. 242; but see *Glasgow Corporation v. Johnston* on p. 31.

III. ARISING OUT OF DELICT—*Ratione Delicti*

This jurisdiction applies to—

1. An action arising out of delict committed within the jurisdiction when the defender is personally cited there. Sec. 6 (i).

Action of damages for slander held competent, *Kermick v. Watson*, 1871, 9 M. 984; 43 J. 542; *Macleod v. Dobson*, 1900, 16 Sh. Ct. Rep. 33 and 104 (damage to fishing boats). *Carrigan v. Phillips*, 1905, 21 Sh. Ct. Rep. 335 (filiation action, defender resident in England). Jurisdiction was sustained in a case arising out of delict where there was postal service only, the defender, a Scotchman, being resident in Scotland till a month previous to service

and having left the country, *Glasgow Corporation v. Johnston*, 1915, S.C. 555; 52 S.L.R. 434; 1915, 1 S.L.T. 253.

Also see *Lloyd's Variety Agency Ltd. v. Dainton*, 1915, 31 Sh. Ct. Rep. 41.

2. An action for interdict against an alleged wrong committed or threatened to be committed within the jurisdiction. Sec. 6 (e).

Toni Tyres, Ltd. v. Palmer Tyre, Ltd., 1905, 7 F. 477; 42 S.L.R. 352; 12 S.L.T. 707; *Campbell v. Arnett*, 1893, 1 S.L.T. 159; *Gill v. Cutler*, 1895, 23 R. 371; 33 S.L.R. 218; 3 S.L.T. 205; *Brown v. Kiddie*, 1904, 20 Sh. Ct. Rep. 92.

IV. BY PERSONAL SERVICE ALONE

Personal service on the defender, within the sheriffdom, would probably found jurisdiction in the case of a defender who has no fixed place of abode.

This applies to soldiers and sailors who have no house or residence, *Brown v. M'Callum*, 1845, 7 D. 423; and to travelling merchants, *Linn v. Casadinos*, 1881, 8 R. 849; 18 S.L.R. 603.

As to personal service under Summary Jurisdiction (Process) Act, 1881, in action of affiliation, see *Sheridan v. Ball*, 1923 S.L.T. (Sh. Ct.) 76; 39 Sh. Ct. Rep. 163.

V. CARRYING ON BUSINESS

1. A defender is subject to the jurisdiction of the Sheriff—(a) if he carries on business and has a place of business within the jurisdiction; and (b) if he is cited either personally or at such place of business. Act of 1907, sec. 6 (b), as amended by Act of 1913.

As to what constitutes carrying on business and having a place of business in terms of this section, see *Hay's Trs. v. L. & N.-W. Railway Co.*, 1909, S.C. 707; 46 S.L.R. 513; 1 S.L.T. 291. Cf. *Lord Advocate v. Huron and Erie Loan Co.*, 1911, S.C. 612; 48 S.L.R. 554; 1 S.L.T. 280.

Service at a chief office of a railway founds jurisdiction in the sheriffdom in which it is situated, although it is not the head office, *Jack v. N.B. Railway Co.*, 1885, 12 R. 1029; 22 S.L.R. 677; *Marshall v. C.R. Co.*, 1900, 2 F. 704; 37 S.L.R. 514; 7 S.L.T. 459. See also *M'Laughlin v. Dumbarton Steamboat Co.*, 1903, 19 Sh. Ct. Rep. 270. Service on a company is now dealt with by Rule 11 as amended by the Act of 1913. See p. 67.

Under the similar section of the Act of 1876 jurisdiction was held not to be constituted merely by—

(a) Possession of heritage, or being a joint-tenant, *M'Bey v. Knight*, 1879, 7 R. 255; 17 S.L.R. 130.

(b) Judicial factor realising the estate of a deceased farmer, *Ferguson v. Dyer*, 1882, 9 R. 671; 19 S.L.R. 450.

(c) Party being represented in the sheriffdom by an agent who had no power to make contracts, *Laidlaw v. Provident, etc., Insur. Co.*, 1890, 17 R. 544; 27 S.L.R. 354; *Robertis v. Provincial Homes, etc., Co. Ltd.*, 1907, S.C. (J.) 7; 44 S.L.R. 76; 14 S.L.T. 440.

(d) Executors obtaining confirmation in the Court of a deceased's domicile, *Halliday's Exr. v. Halliday's Exrs.*, 1886, 14 R. 251; 24 S.L.R. 204; but see *Aston & Co. v. Barclay and Others*, 1913, 29 Sh. Ct. Rep. 10; see also *Thomson v. Wilson's Trs.*, 1895, 22 R. 866; 32 S.L.R. 653; 3 S.L.T. 77 (one proprietor of estate residing in county, the other in England; jurisdiction held sufficient for action of damages arising out of subjects).

Retention of tenancy of a place of business after business had ceased to be carried on therein was held insufficient in *Dallas, Ltd. v. Hodge & Co.*, 1910, 26 Sh. Ct. Rep. 214.

A trade union registered in England and having a branch in Scotland and its rules recorded there, is liable to the jurisdiction of the Scottish Courts, *Mackendrick v. National Union of Dock Labourers*, 1911, S.C. 83; 48 S.L.R. 17; 1910, 2 S.L.T. 215.

2. A company is subject to the jurisdiction of the Sheriff of the county in which it carries on business. This common law jurisdiction is based on the principle that a company's place of business corresponds to the place of residence in the case of an individual.

Hughes v. Stewart, 1907, S.C. 791; 44 S.L.R. 549; 14 S.L.T. 856. The place of citation need not be its principal place of business, *Harris v. Gillespie & Co.*, 1875, 2 R. 1003; *Paterson v. Etablissements Hutchinson*, 1916, 32 Sh. Ct. Rep. 105 (foreign company carrying on business here); *Robb v. Lely*, 1922, 38 Sh. Ct. Rep. 81 (playing in a theatre is not occupying a place of business).

As to jurisdiction when place of business is partly in one sheriffdom and partly in another, see *Connell & Co. v. Dempsie*, 1873, 45 J. 507.

By the interpretation clause of the Act, sec. 3 (e), it is provided that "person" includes "company, corporation, or association, and firm of any description nominate or descriptive, or any board corporate or unincorporate."

A company registered under the Companies (Consolidation) Act, 1908, is subject to the jurisdiction of the Sheriff of the

county in which it has its registered office, as also of any county where it may carry on business. *Brown & Critchley Ltd. v. Decorative Art Journals Co. Ltd.*, 1922, S.C. 192; 59 S.L.R. 241; 1922 S.L.T. 117.

VI. SITUATION OF THE SUBJECT OF THE CAUSE—

Ratione Rei Sitæ

Possession of heritable or of moveable property does not found a universal jurisdiction in the Sheriff Court. It only gives a limited jurisdiction as regards the property in dispute.

Anderson v. Sillars, 1894, 22 R. 105; 32 S.L.R. 94; 2 S.L.T. 335; *M'Bey v. Knight*, 1879, 7 R. 255; 17 S.L.R. 130.

As to jurisdiction founded by the arrestment of moveables, see p. 35.

The situation of the subject of dispute founds jurisdiction in the following cases:—

1. Actions regarding Heritage.

(1) **Actions relating to Questions of Heritable Right or Title.**—Actions relating to questions of heritable right or title, including irritancy and removing, or to division of commonities, or division, or division and sale, of common property, are, if raised in the Sheriff Court, to be raised in the Court of the district where the property forming the subject in dispute is situated. All parties against whom any such action is brought are in such action subject to that jurisdiction. Sec. 5.

(2) **Actions relating to Heritable Property, or the Defender's Interest therein.**—Where the defender is owner or part owner or tenant or joint tenant, whether individually or as a trustee, of heritable property within the jurisdiction, and the action relates to such property or to his interest therein. Sec. 6 (*d*).

This section has been held to apply to an action by a tenant against a landlord for repairs on a house, *Allan v. Alexander's*

Trs., 1908, 16 S.L.T. 491, but not to an action on a bill alleged to relate to heritage, *Gordon v. Nicoll*, 1913, 29 Sh. Ct. Rep. 213; *Fletcher v. Kinnoch*, 1905, 31 Sh. Ct. Rep. 159.

The ownership here referred to presumably means the actual beneficial right of property, independently of the state of the heritable title. The principles laid down in the Court of Session on this point, in questions of jurisdiction over a foreigner by reason of possessing heritage in Scotland, may be referred to, *e.g.*:—

Dowie v. Tennant, 1891, 18 R. 986; 28 S.L.R. 758; *Thorburn v. Dempster*, 1900, 2 F. 583; 37 S.L.R. 415; 7 S.L.T. 364; *Bowman v. Wright*, 1877, 4 R. 322; 14 S.L.R. 250; *Buchan v. Grimaldi*, 1905, 7 F. 917; 42 S.L.R. 706; 13 S.L.T. 229; *Love v. Love*, 1907, S.C. 728; 44 S.L.R. 649; 15 S.L.T. 12 (jurisdiction to determine rights in sum in bond and disposition in security where defender abroad).

(3) Actions regarding Nuisances, Servitudes, etc.—

Parties against whom such actions or proceedings were brought were made amenable to the jurisdiction of the Sheriff of the territory within which such property or servitude was situated, by the Sheriff Court Act, 1838, sec. 15. This section was repealed by the Act of 1907, but this rule no doubt still applies.

An action for interdict against interfering with water supply was held competent though defenders were outwith the sheriffdom, *Culross Water District Committee v. Smith Sligo's Trs.*, 1891, 19 R. 58; 29 S.L.R. 73. But an action by police commissioners for recovery of proportion of expense of repairs of street against proprietors not resident or cited within sheriffdom was held incompetent, *Pollokshaws Commissioners v. Maclean*, 1899, 2 F. 96; 37 S.L.R. 76; 7 S.L.T. 230. Such a case might in certain circumstances fall under sec. 6 (*d*).

(4) Actions regarding Rents, Removings, Ejections, etc.

—The Sheriff has jurisdiction though the defenders are outwith the sheriffdom.

Mouat v. Lee, 1891, 18 R. 876; 28 S.L.R. 695 (tenant in possession of subjects, but resident in another sheriffdom). But where, at the conclusion of a tenancy, the tenant raised an action against the landlords, both of whom were resident outwith the sheriffdom, for payment of claims arising out of the lease, the plea of no jurisdiction was sustained, *Maxwell v. Horwood's Trs.*, 1902, 4 F.

489; 39 S.L.R. 341; 9 S.L.T. 420. This jurisdiction may now be regarded as included under the provision of sec. 6 (d).

2. Actions regarding Moveables.

(1) **Actions of Furthcoming**, where the fund or subject *in medio* is situated within the jurisdiction, or where the arrestee is subject to the jurisdiction of the Court. Sec. 6 (g).

Where the arrestee is subject to the jurisdiction it is not necessary to found jurisdiction in an action of furthcoming against the common debtor, *Leggatt Brothers v. Gray*, 1912, S.C. 230; 49 S.L.R. 189; 1 S.L.T. 49.

(2) **Actions of Multiplepinding**, where the fund or subject *in medio* is situated within the jurisdiction, or the holder of the fund is subject to the jurisdiction of the Court. Sec. 6 (g).

(3) **Actions for Delivery or for Sale of Moveables situated within the Sheriffdom.**

Scottish Central Railway Co. v. Ferguson, 1863, 1 M. 750; 35 J. 440; *White v. Dunbar Mags.*, 1915, S.C. 395; 52 S.L.R. 337; 1915, 1 S.L.T. 149; *Pender v. Lamont*, 1917, 33 Sh. Ct. Rep. 310.

VII. ARRESTMENT OF MOVEABLE PROPERTY TO FOUND JURISDICTION

This procedure creates jurisdiction against a person not otherwise subject to the jurisdiction of the Courts of Scotland. It is constituted by arrestment within the jurisdiction—

1. Of a ship or vessel of which the defender is owner, part owner, or master; or

2. Of goods, debts, money, or other moveable property belonging to the defender. Sec. 6 (c).

Procedure to found Jurisdiction by Arrestment. —

Warrant or precept for the arrestment has to be obtained from the Sheriff, and for this purpose an application has

to be presented. Upon lodging this application a deliverance will be at once pronounced in terms of the crave, no intimation being necessary.

The precept of arrestment, though issued by the Clerk of Court and signed by him, is in practice prepared by the agent.

Forms will be found in the Appendix, p. 483.

Letters of arrestment under the signet may also be used as the warrant for an action in the Sheriff Court, *Dickson & Walker v. John Mitchell & Co.*, 1910, S.C. 139; 47 S.L.R. 110; 1909, 2 S.L.T. 390.

The precept of arrestment should be accurate in all particulars, but the failure to authenticate an alteration as to the year of the Sovereign's reign was held not to be fatal, where the date of signeting was correctly stated, *Baird v. Baird*, 1910, 1 S.L.T. 95.

The precept is executed by an officer in the same way as an arrestment on the dependence or in execution, the schedule of execution, however, bearing that the arrestment is for the purpose of founding jurisdiction.

There previously existed in the Sheriff Court a jurisdiction in maritime causes over foreigners which could be constituted by arrestment, *Bruhn v. Grunwaldt*, 1863, 2 M. 335; 36 J. 223. This was extended by the Act of 1877. The Act of 1907 extends to the Sheriff Court, jurisdiction founded on arrestment, which is now similar to the jurisdiction previously competent in the Court of Session alone.

It has been held by some Sheriffs that the schedule and execution should bear or show that the arrestment has been made "within the jurisdiction." This seems unnecessary, as the fact of the arrestment, if jurisdiction is disputed, must be proved by the pursuer.

Where an action is raised by virtue of jurisdiction founded on arrestment, the rule that a party who appears may not state objection to regularity of service does not apply. Rule 13.

The following principles, applied in the Court of Session, may be noted, as being now also applicable to Sheriff Court procedure:—

(a) The arrestment should be effected before or simultaneously with the service of the writ, though not necessarily before the warrant of service is obtained.

Wall's Trs. v. Drynan, 1888, 15 R. 359; 25 S.L.R. 275; *North v. Stewart*, 1890, 17 R. (H.L.) 60; 38 S.L.R. 397.

(b) It is not clear within what time after executing the arrestment the writ must be served.

Jacobo v. Scott, 1895, 2 S.L.T. 455; *Craig v. Brunsgaard & Co.*, 1896, 23 R. 500; 33 S.L.R. 348; 3 S.L.T. 265.

(c) Any moveable subject or right, corporeal or incorporeal and not "illusory," belonging to the defender and in the hands of a third party, may be arrested to found jurisdiction.

Arrestment of the following has been held sufficient—9/3, *Ross v. Ross*, 1878, 5 R. 1013; 15 S.L.R. 664. A brass door plate, *Dalrymple v. Lancashire Trust, etc., Co.*, 1894, 2 S.L.T. 79. Obligation to account, *Baines & Tait v. Compagnie Générale des Mines d'Asphalte*, 1879, 6 R. 846; 16 S.L.R. 471; *Jacobo v. Scott*, 1895, 2 S.L.T. 458; *Napier & Co. v. Halvorsen*, 1892, 19 R. 412; 29 S.L.R. 343; *Smith v. Rosenbloom*, 1915, 53 S.L.R. 5; 1915, 2 S.L.T. 18. The actual state of accounts, if ascertained, and not the potential liability to account, determines the indebtedness, *Mitchell & Muil, Ltd. v. Feniscliffe Products Co. Ltd.*, 1920, 57 S.L.R. 277; 1920, 1 S.L.T. 199. Conditional or contingent right, *Maclaren v. Preston*, 1893, 1 S.L.T. 75. Shares in a joint-stock company, *American Mortgage Co. v. Sidway*, 1908, S.C. 500; 45 S.L.R. 390; 15 S.L.T. 850; but not uncalled capital, *Lindsay v. Martona Rubber Estates, Ltd.*, 1911, 2 S.L.T. 468.

The following have been held not arrestable:—Documents of no mercantile value, *Trousdale's Trs. v. Forcett Railway Co.*, 1870, 9 M. 88; travellers' sample books, *Millar & Lang v. Polak*, 1907, 14 S.L.T. 788; *Millar & Lang v. Poole*, 1907, 15 S.L.T. 76; corporeal productions in a cause as specimens of damaged condition, *Hurst, Nelson & Co., Ltd. v. Spenser Whatley, Ltd.*, 1912, S.C. 1041; 49 S.L.R. 830; 2 S.L.T. 97; personal effects in the hands of a hotelkeeper, *Hutchison v. Hutchison*, 1912, 1 S.L.T. 219.

The sum arrested must be due to the party called as defender, *Parnell v. Walter*, 1889, 16 R. 917; 27 S.L.R. 1; *Heron v. Winfield*, 1894, 22 R. 182; 32 S.L.R. 137; 2 S.L.T. 349; *Macguire v. Smith*, 1889, 27 S.L.R. 14; *Young v. Aktiebolaget Ofnerums Bruk*, 1890, 18 R. 163; *Whittall v. Christie*, 1894, 22 R. 91; 32 S.L.R. 78; 2 S.L.T. 319; *Union Bank v. Donnington's Trs.*, 1901, 8 S.L.T. 404; *Hope's Trs. v. Hope*, 1904, 11 S.L.T. 625; *Millar & Lang v. Polak, supra*; *Millar & Lang v. Poole, supra*; *Pollock, etc. v. Old Park Forge, Ltd.*, 1907, 15 S.L.T. 3 ("Company" wrongly inserted in schedule—held valid. Arrestment of sum in cheque before grantee knew of its being honoured, held good. "Trickery" or *mala fides* may constitute a bar); *Braby & Co. v. Danks & Co.*, 1907,

15 S.L.T. 161 (arrestment of rejected goods); *Leggatt Brothers v. Gray*, 1908, S.C. 67; 45 S.L.R. 67; 15 S.L.T. 533 (arrestment of debt for which cheque given held inept). Arrestment of a sum consigned in the hands of a sheriff-clerk was held incompetent in respect that until the case was decided it was not ascertained to whom the money was due, *Shankland & Co. v. M'Gildowny*, 1912, S.C. 857; 49 S.L.R. 564; 1 S.L.T. 410. See also *Murray v. Wallace, Marrs & Co.*, 1914, S.C. 114; 51 S.L.R. 95; 1913, 2 S.L.T. 385; *Blair v. Mitchell*, 1915, 2 S.L.T. 97; *Moore v. Weinberg & Ernsthausen*, 1917, S.C. (H.L.) 25; 54 S.L.R. 78; 1916, 2 S.L.T. 321; *Scottish Iron Company v. Gillieaux & Collinet*, 1914, 30 Sh. Ct. Rep. 42.

(d) It seems doubtful whether arrestment is sufficient to found jurisdiction for actions of declarator or for actions *ad factum præstandum*. It would not be sufficient for an action of separation.

Holt v. Holt, 1908, 25 Sh. Ct. Rep. 112.

Arrestment founds jurisdiction for an action with alternative craves for delivery or damages, *Union Electric Co. Ltd. v. Holman & Co.*, 1913, S.C. 954; 50 S.L.R. 767; 1913, 2 S.L.T. 5.

As regards the Court of Session, it is doubtful whether arrestment would found jurisdiction in a reduction, *Shaw v. Dow*, 1869, 7 M. 449; *Williams v. Royal College of Veterinary Surgeons*, 1897, 5 S.L.T. 208; *Powell v. Mackenzie & Co.*, 1900, 8 S.L.T. 182. The Act of 1907, sec. 6, deals with "any action" competent in "the Sheriff Court." These words by themselves are sufficient to leave no room for doubt as to the Sheriff Court; but jurisdiction by arrestment being anomalous, it is thought the Legislature could hardly have intended to confer a wider power in the Sheriff Court than exists in the Court of Session.

This method of creating jurisdiction would be available to a foreigner for a debt contracted abroad, *Tyne Improvement Comrs. v. Aktieselskabet Aalborg Dampskibsselskab*, 1905, 12 S.L.T. 693.

The expense of constituting jurisdiction by arrestment is, according to practice, a judicial charge in the process.

See *Smith & Son v. Owners of Crystal Spring*, 1890, 7 Sh. Ct. Rep. 67. Cf. *Wallace & Son v. Toye*, 1912, 28 Sh. Ct. Rep. 50.

(e) Arrestment to found jurisdiction does not create a nexus on the property. If the property is to be attached for payment, arrestment on the dependence must be used in the ordinary way.

Craig v. Brunsgaard, and *North v. Stewart*, *supra*, pp. 36 and 37;

Stillie's Trs. v. Stillie, 1898, 6 S.L.T. 173; *Hope v. Derwent Rolling Mill Co.*, 1905, 7 F. 837; 42 S.L.R. 794; 13 S.L.T. 364; *Fraser-Johnston Engineering Co. v. Jeffs*, 1920, S.C. 222; 57 S.L.R. 214; 1920, 1 S.L.T. 131.

VIII. RECONVENTION

A pursuer, though not otherwise subject to the jurisdiction of a Sheriff Court, renders himself liable in actions against him, raised during the dependence at the instance of the party he has called into Court.

The provision of the Act is as follows:—An action may be brought within the jurisdiction of the Sheriff “where the party sued is the pursuer in any action pending within the jurisdiction against the party suing.” Sec. 6 (*h*).

The provision of the Act would appear to enlarge, as regards the Sheriff Court, the general rule followed in the Court of Session that the two actions must arise out of the same matter or be of the like nature. They must both be in dependence, *Ponton's Exrs. v. Ponton*, 1913, S.C. 598; 50 S.L.R. 42; 1 S.L.T. 182.

Reconvention has been held to apply to lodging a claim in a sequestration, *Barr v. Smith, etc.*, 1879, 7 R. 247; 17 S.L.R. 126.

Jurisdiction was sustained where the action *ex reconventione* was brought after judgment, but before extract in the other action had been issued, *Allan v. Wormser, etc.*, 1894, 21 R. 866; 31 S.L.R. 698; 2 S.L.T. 68; but the decision in *Hurst, Nelson & Co. Ltd. v. Spenser Whatley, Ltd.*, 1912, S.C. 1041; 49 S.L.R. 830; 2 S.L.T. 97, that the action must be brought before the merits of the *actio conventionis* have been finally disposed of, apparently conflicts with the decision in the former case. The words of the section would seem to admit of the *actio reconventionis* being raised at any time before the *actio conventionis* is at an end, and to be in conformity with the earlier of the cases last referred to.

See also *Hammond v. Vance*, 1898, 14 Sh. Ct. Rep. 283; *Kinnison v. Stuart*, 1903, 11 S.L.T. 184.

As to an action for interdict founding jurisdiction *reconventione*, see *Davis v. Cadman*, 1897, 24 R. 297; 34 S.L.R. 260; 4 S.L.T. 242.

Reconvention will not apply unless the person suing in the one case and being sued in the other are suing and being sued in the same capacity; *Ponton's Exrs. v. Ponton, supra*.

IX. OBJECTIONS TO JURISDICTION—PROROGATED JURISDICTION

Where a party cited to appear is not subject to the jurisdiction of the Sheriff, the following courses are open :—

(a) He may abstain from entering appearance, in which case decree against him will be a decree in absence.

A defender may be reponed against such a decree. The decree is also liable to reduction. See *Lattimore & Co. v. Singleton, Dunn & Co.*, 1911, 2 S.L.T. 360.

(b) He may enter appearance and state the preliminary plea that he is not subject to the jurisdiction of the Court.

Entering appearance bars objections to citation but not to jurisdiction.

Rule 13 makes exceptions in the cases of actions brought in respect of jurisdiction founded on citation alone or by arrestment.

Pleas against the jurisdiction should be stated at the outset, *Assets Co. v. Simpson*, 1894, 22 R. 178; 32 S.L.R. 143; 2 S.L.T. 349; *Dundee Provident, etc., Co. v. Macdonald*, 1884, 11 R. 537; 21 S.L.R. 383; but the plea was held to be effective although not stated until the adjustment of the record, *Fraser-Johnston Engineering Co. v. Jeffs*, 1920, S.C. 222; 57 S.L.R. 214; 1920, 1 S.L.T. 131.

A defender may, by previous agreement or subsequent conduct, be barred from taking exception to the jurisdiction, *International Exhibition v. Bapty*, 1891, 18 R. 843; 28 S.L.R. 648; *Eiderslie S.S. Co. v. Burrell*, 1895, 22 R. 389; 32 S.L.R. 328; 2 S.L.T. 499; *Assets Co. v. Simpson*, *supra*; *Dundee Provident, etc., Co. v. Macdonald*, *supra*.

If the plea of no jurisdiction is sustained the action may be dismissed, or the Sheriff may, on such conditions as to costs as he thinks fit, remit the cause to the Sheriff before whom it appears to him it ought to have been brought. This interlocutor, if by a Sheriff-Substitute, can be appealed to the Sheriff within seven days, with leave of the Sheriff-Substitute. Rule 21; see also rule 13.

(c) He may enter appearance and join issue on the merits of the case, in which event he is held to prorogate the jurisdiction, which will then be held to be good as against him. Sec. 6 (*j*).

Where there is no jurisdiction in the Sheriff, the Supreme Court will not, on appeal, adopt the proceedings and so cure the defect. *Gillan v. Barony Council*, 1898, 1 F. 183; 36 S.L.R. 135; 6 S.L.T. 169.

CHAPTER V.

CLASSIFICATION OF CIVIL PROCEEDINGS IN THE SHERIFF COURT

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UNDER the scheme of procedure embodied in the Act of 1907 as amended by the Act of 1913, civil proceedings in the Sheriff Court may be divided into five classes, each distinguished by some peculiar features, viz. :—(1) Small Debt Causes; (2) Summary Causes; (3) Summary Applications; (4) Ordinary Causes; and (5) Actions by Employees against Employers.

I. SMALL DEBT CAUSES

These are causes in which the sum sued for, or the value of articles sought to be delivered, does not exceed £20. Act of 1907, sec. 42.

The procedure in these cases is regulated by the “Small Debt Acts.” These are defined by the Act of 1907, sec. 3 (*j*), as the Small Debt (Scotland) Acts, 1837 to 1889, and Acts explaining or amending the same, and they are themselves amended by the Act of 1907. Procedure in these actions is dealt with at p. 271.

The jurisdiction of the Small Debt Court is not privative. Claims not exceeding £20 in value may, so far as competency is concerned, be brought in the ordinary Court as summary causes.

II. SUMMARY CAUSES

The "summary cause" was the creation of the Act of 1907. That statute introduced a special form of procedure for cases of small importance, the chief features being the absence of formality and the reduction of costs. Difficulties in defining the cases falling under the category of "summary causes" were to some extent removed by the amending Act of 1913.

The Act of 1907, sec. 3 (1), as amended, now defines the term "summary cause" as including:—

1. Actions for payment of money not exceeding £50 in amount, exclusive of interest and expenses.

2. All actions in which the parties admit that the value of the action, excluding interest and expenses, does not exceed £50.

From the actions above mentioned are excluded—

(a) Actions brought and conducted in the Small Debt Court.

(b) Claims under the Workmen's Compensation Act.

3. All actions which the parties consent at any stage shall be tried summarily.

The most important change effected by the definition of the 1913 Act is the removal from this class of the exclusion of actions with conclusions *ad factum præstandum*. This results in the opinions expressed in *Abrahams, Ltd. v. Campbell*, 1911, S.C. 353; 48 S.L.R. 191; 1910, 1 S.L.T. 2, being no longer of practical value. The inclusion of conclusions other than for a money payment may result in the value of the cause exceeding the £50 limit, but whether the petitory conclusion is above or below the limit the action is not a summary cause as defined by the Act. See *Duke of Argyll v. Muir*, 1910, S.C. 96; 47 S.L.R. 67; 1909, 2 S.L.T. 347.

The question of determination of value of a cause may sometimes present difficulties, and the general rules for deciding the competency of petitory actions in reference to the question of value as regards appeal may have to be referred to (see p. 223). This may arise as a matter of

practical importance either (1) at the time the action is raised and the procedure to be adopted, *i.e.* whether it is to be treated as a summary cause or not, has to be considered; or (2) in view of the competency of removing or appealing the action from the Sheriff Court to the Court of Session.

The question may also arise as to whether any particular cause is a "summary application." The question first arises on the presentment of the writ for warrant of service, and there seems to be no direction in the Act as to how the difficulty is to be dealt with. It can hardly have been the intention of the Legislature to leave the determining of whether a cause is to be "summary" or "ordinary," or an "application," to the sheriff-clerk's selection of the form of warrant of service. If, however, the parties adopt the procedure for a summary cause, they may be held to give implied consent to the cause being tried "summarily," *Summerlee Iron Co. v. Duff*, 1920, S.C. 291; 57 S.L.R. 222; 1920, 1 S.L.T. 153.

It is thought that there is nothing in the Act to prevent the Sheriff at any stage of a cause, if it appears that the case has been dealt with in its initial stages in the wrong category, putting the matter right by directing the cause to proceed on the right lines, *United Creameries Co. Ltd. v. Boyd & Co.*, 1912, S.C. 617; 49 S.L.R. 460; 1 S.L.T. 297; *Muir & Weir v. Petrie*, 1911, 27 Sh. Ct. Rep. 151 (summary or ordinary); *Thirtle v. Copin*, 1912, 29 Sh. Ct. Rep. 13; *M'Gregor v. M'Kinnon*, 1916, 32 Sh. Ct. Rep. 3.

As to the conjunction of a summary cause and an ordinary cause, see *M'Donald v. M'Donald*, 1913, 29 Sh. Ct. Rep. 157.

The view taken in *Gottlieb Fons Patent Inkwell Ltd.*, 1917, 33 Sh. Ct. Rep. 70, that putting forward a counter-claim exceeding £50 in a summary cause should lead to the action being treated as an ordinary cause does not seem to find support in *Bowie v. Donaldson*, 1922, S.C. 9; 59 S.L.R. 26; 1921, 2 S.L.T. 236.

1. Procedure in Summary Cause.—The special features of procedure in a summary cause are — (1) That after warrant of service has been granted the Sheriff may order such procedure as he thinks requisite; and (2) that there is only a modified right of appeal.

The following are the provisions of the Act in regard to the procedure in a summary cause:—

1. The initial writ is in the same form as in other actions having condescendence and note of pleas in law annexed,

but the order for service appoints the defender to answer at a fixed time and place instead of to lodge a notice of appearance. Rules 1 and 4 (a). See p. 65.

2. The Sheriff is to order such procedure as he thinks requisite (sec. 8). He may order defences to be lodged, or may make or certify a note upon the writ, or separately, of the pleas of the defender, and may appoint a diet for the trial of the cause, or may order such other procedure as the circumstances seem to him to require. Act of 1907, rule 41, as amended by Act of 1913.

The procedure in different sheriffdoms will probably vary according to the views of individual Sheriffs as to the advantages of written pleadings. It will probably be expedient that the normal practice should be to have a record in summary causes, except in cases where questions of very little importance or value are at issue, and the point at issue is raised in a very clear and intelligible form in small compass. A short note of the defence or a note of pleas may in such circumstances be sufficient, and occasionally the case may be decided without any written pleading beyond the initial writ.

3. The evidence is not recorded unless the Sheriff, on the motion of either party, made before the examination of witnesses is begun, so orders. Act of 1907, sec. 8, as amended by Act of 1913.

4. The Sheriff is to dispose of the case without delay, by interlocutor containing findings in fact and in law. Act of 1907, sec. 8.

2. Appeal from Sheriff-Substitute to Sheriff.—(1) Where the evidence has not been recorded, appeal is competent from the Sheriff-Substitute to the Sheriff on the findings in law only. Sec. 8.

(2) Where the evidence has been recorded, appeal from the judgment of the Sheriff-Substitute to the Sheriff on fact and law is competent. Sec. 8.

The procedure in appeals from the Sheriff-Substitute to the Sheriff will apparently be the same as in appeals in ordinary actions.

Interlocutory judgments in summary causes may be appealed to the Sheriff. *Salmond v. Ross*, 1920, 36 Sh. Ct. Rep. 146.

3. Appeal from Sheriff to Court of Session.—Appeal in a summary cause on this method of procedure being introduced was provided for by section 8 of the Sheriff Court Act of 1907. In such a cause an exception was admitted to the leading enactment of section 28 of that statute allowing appeal only if the value of the cause exceeded £50. Section 28, as now amended by the Act of 1913, re-enacts the right of appeal, although in an indirect and parenthetical manner. It provides that “no appeal shall be competent where the cause does not exceed £50 in value, exclusive of interest and expenses, or is being tried as a summary cause, unless the Sheriff, after final judgment by him, on an appeal, on the motion of either party made within seven days of the date of the final interlocutor, certifies the cause as suitable for appeal to the Court of Session.”

If leave is obtained, appeal is competent within three months of the judgment, unless it has been sooner implemented or extracted, which it may be after seven days from its date. Rule 92.

The granting of leave to appeal would apparently not have the effect of prohibiting the issue of extract.

The requirement of the Sheriff's certificate introduced an element of uncertainty which was before 1907 unknown in practice. This is the only instance of an absolute veto on the right of appeal on the merits, and no indication is afforded as to what considerations are to weigh with the Sheriff in exercising his discretion. The matter will depend more or less on the views of each individual Sheriff.

It is thought that the necessity of obtaining the leave of the Sheriff will not affect the running of the appealing days from the date of the interlocutor.

See p. 213 as to procedure in appeals to the Court of Session.

See *Duke of Argyll v. Muir*, *supra*, p. 43.

III. SUMMARY APPLICATIONS

This class of cause includes—

1. All applications of a summary nature brought under the common law jurisdiction of the Sheriff. Act, sec. 3 (*p*).

2. All applications by appeal or otherwise under any Act of Parliament which provides, or in practice allows, that applications are to be disposed of in a summary manner, but does not more particularly define in what form they are to be heard, tried, and determined. Act, sec. 3 (*p*).

3. All applications directed by any Act of Parliament to be heard, tried, and determined summarily or in the manner provided by sec. 52 of the Sheriff Courts (Scotland) Act, 1876, which direction is to be read and construed as if it referred to sec. 50 of the Act of 1907. Act, sec. 50.

Procedure in Summary Applications.—1. The initial writ is the same as in other actions, having condescendence and pleas in law annexed, and where citation is necessary the Sheriff grants warrant to cite the defender to appear at a fixed time and place. Sec. 50, rules 1 and 4 (*a*).

2. Where a hearing is necessary, the Sheriff appoints the application to be heard at a diet to be fixed by him, and at that or any subsequent diet (without record of evidence, unless the Sheriff shall order a record) disposes of the matter summarily, and gives his judgment in writing. Sec. 50.

The warrant to cite under rule 4 (*a*) is presumably the same step as the order to be heard under section 50.

In practice, as a rule, the question of procedure is the only matter dealt with at this diet.

3. Nothing contained in the Act is to affect any right of appeal provided by any Act of Parliament under which a summary application is brought. Sec. 50.

Various statutes contain express provisions as to the right of appeal thereunder. Where there are none, the general rule holds that appeal is competent whenever it is not excluded either by implication or expressly. In the absence of special provisions, the provisions of the Act as to appeals in ordinary causes would appear to apply to summary applications.

It has been held that an action for damages in respect of riot might be raised either in the form of a summary application or as

an ordinary action, *Glasgow School Board v. Glasgow Corporation*, 1912, 2 S.L.T. 332.

IV. ORDINARY CAUSES

This phrase is not used in the Act of 1907, nor is there any technical term provided to describe causes which are neither “summary causes” nor “summary applications.” The Act uses the phrase “non-summary causes” in the rubric to rule 42.

The term “ordinary cause” or “ordinary action” is generally adopted in practice, to cover all cases which do not fall under the foregoing classes. It would therefore include—

1. Actions for payment of money exceeding £50 in amount, exclusive of interest and expenses.
2. Actions which have no pecuniary conclusions.
3. Actions which contain conclusions *ad facta præstanda*, whether with or without pecuniary conclusions, and although the pecuniary conclusions do not exceed £50.

The procedure in ordinary causes is dealt with in the subsequent chapters of this work.

V. ACTIONS BY EMPLOYEES AGAINST EMPLOYERS

By the Employers’ Liability Act of 1880, the Workmen’s Compensation Act, 1906, and the Sheriff Court Act, 1907, as amended by the Act of 1913, special features have been introduced into the procedure for the trial of claims by employees against their employers in respect of injuries from accidents. The term “employee” includes the legal personal representative of an employee, and any person who by the law of Scotland may be entitled to *solatium* in respect of the death of an employee. Act of 1913, sec. 3, Schedule I. The results of the various enactments may be summarised as follows:—

1. An action for reparation for injury by accident arising out of and in the course of employment, based upon

fault at common law, may be raised and tried either in the Sheriff Court or, provided the amount sued for exceeds £50, in the Court of Session. If such an action is raised in the Sheriff Court, the action cannot be removed to the Court of Session for jury trial. Act of 1907, sec. 30, as amended by Act of 1913.

2. An action for injury by accident arising out of and in the course of employment brought under—(a) the Employers' Liability Act, or (b) alternatively under that Act or at common law, can be raised in the Sheriff Court alone. Such an action cannot be appealed or removed from the Sheriff Court for trial in the Court of Session.

The right of appeal in such actions to the Court of Session by stated case under the Workmen's Compensation Act, 1906, sec. 14, has been apparently taken away by the provisions of the Act of 1907, as amended. See *Lawrie v. Banknock Coal Co. Ltd.*, 1911, S.C. 817; (H.L.) 1912, S.C. 20; 49 S.L.R. 98; 1911, 2 S.L.T. 475.

3. Such actions, as also actions based on common law, may, if required by either party, and if the claim exceeds £50, be tried before a jury in the Sheriff Court, with the limited right of appeal to the Court of Session. Sec. 31, as amended by Act of 1913.

4. Where the claim does not exceed £50, an action for reparation (a) based upon fault at common law, or (b) under the Employers' Liability Act, or (c) alternatively under that Act or at common law, must be raised in the Sheriff Court, and will be dealt with as a summary cause under sec. 8.

There are the ordinary rights of appeal as in summary causes from the Sheriff-Substitute to the Sheriff, and with leave of the Sheriff, to the Court of Session.

5. Any such action where the claim does not exceed £20 may also be raised in the Small Debt Court.

6. A claim for compensation made under the Workmen's Compensation Act can be sued in the Sheriff Court alone, and can only be brought into the Court of Session by appeal on a stated case under that Act.

Applications under the Workmen's Compensation Act fall under the class of summary applications.

After conflicting views, practice has now resulted in the universal adoption of the form of the initial writ in terms of the Act of 1907.

The procedure is regulated by the Workmen's Compensation Act and C.A.S., L, xiii.

As to application to Workmen's Compensation cases of the Rules in Schedule to 1907 Act, see *Park v. Coltness Iron Co. Ltd.*, 1913, S.C. 1163; 50 S.L.R. 966; 1913, 2 S.L.T. 232.

As to awarding compensation in action raised at common law, see *Stewart v. Perth General Station Committee*, 1923, S.C. 356; 60 S.L.R. 194; 1923 S.L.T. 145.

CHAPTER VI.

PROCEDURE IN RAISING ACTION IN THE SHERIFF COURT

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SUBJECT to the provisions of any Act of Parliament in force after the passing of the Act, procedure in the Sheriff Court in all civil causes is to be conform to the rules of procedure set forth in the First Schedule annexed to the Act of 1907 (Appendix I., p. 313) as amended by the Act of 1913. These rules are to be construed, and to have effect as part of the Act. Act, sec. 39.

INITIAL WRIT, CONDESCENDENCE AND PLEAS IN LAW

Initial Writ.—All actions are to be commenced by writ as nearly as may be in the Form A annexed to the Act, rule 1. See form on p. 331, and various forms, pp. 434 *et seq.*

The rule excepts petitions for service of heirs and completion of title under (a) the Titles to Land Consolidation Act, 1868, and (b) the Conveyancing Act, 1874. Act, rule 1.

The term “action” and the term “cause,” which appears to be used interchangeably with it, includes every civil proceeding competent in the ordinary Sheriff Court. Act, sec. 3 (d), as amended by the Act of 1913. Form A

is to be adopted as the initial writ in ordinary and summary causes and in summary applications.

Donald v. Donald, 1913, S.C. 274, 50 S.L.R. 155; 1912, 2 S.L.T. 436.

The expression "ordinary Sheriff Court" is not defined or interpreted. It would seem to apply to all business that may be conducted before the Sheriff with the exception of such as falls within the category of criminal business, cases regulated by the Small Debt Acts, and business of a ministerial or administrative nature.

The procedure enjoined by the Act should be followed, so far as appropriate, in causes in the Dean of Guild Court, *Jeffray v. Angus*, 1909, S.C. 400; 46 S.L.R. 388; 1 S.L.T. 84; *Somerville v. New Edinburgh Billposting Co.*, 1911, 48 S.L.R. 477; 1 S.L.T. 350; *Smith v. Rennie*, 1919, S.C. 705; 56 S.L.R. 606; 1919, 2 S.L.T. 185.

The term "initial writ" is used throughout the rules, and is defined as meaning "the statement of claim, petition, note of appeal, or other document by which the action is initiated." Act, sec. 3 (*k*).

No technical term is provided for the form of document originating a cause, and the terms "writ" and "petition" are used without discrimination. See Note on Forms in the Appendix, p. 437.

The initial writ consists of the following parts:—

1. The writ proper. This contains (*a*) statement of the sheriffdom and seat of the Court; (*b*) the instance, that is, the statement of the names and descriptions of the parties; (*c*) a crave for the remedy sought.
2. The condescendence.
3. The pleas in law. The condescendence and note of pleas in law are held to constitute part of the initial writ. Rule 2, as amended by the Act of 1913.

Various forms of writs will be found in Appendix II., p. 434 *et seq.*

The following points in regard to each of the parts of the initial writ may be noted:—

1. The Sheriffdom in which the Action is brought, and the Place of Sitting of the Court.—There seems nothing to prevent a pursuer presenting his writ to the Sheriff having

jurisdiction at any place at which the Court holds a sitting, but the Sheriff would be entitled to exercise a discretion whether to grant warrant to cite a defender to that place of sitting from another district or county though within the same sheriffdom.

Tait v. Johnston, 1891, 18 R. 606; 28 S.L.R. 431; *Kelso District Committee v. Fairbairn*, 1891, 3 White, 94; *Davidson v. Davidson*, 1891, 18 R. 884; 28 S.L.R. 688.

This does not apply to actions regarding heritage which under sec. 5 require to be brought where the subject in dispute is situated.

2. Parties.—“Pursuer” means and includes any person making a claim or demand, or seeking any warrant or order. Act, sec. 3 (*n*).

“Defender” means and includes any person who is required to be called in any action. Sec. 3 (*o*).

“Person” includes company, corporation, or association, and firm of any description, nominate or descriptive, or any board, corporate or unincorporate. Sec. 3 (*e*).

The full name, designation, and address of each party ought to be stated.

The minimum of description required is such as is sufficient to identify the person, *Joel v. Gill*, 1859, 22 D. 6; *Improved Edinburgh Property, etc., Society v. White*, 1906, 8 F. 903; 43 S.L.R. 683; 14 S.L.T. 141; *Anderson v. Stoddart*, 1923, 60 S.L.R. 483; 1923 S.L.T. 449.

Where a defender is out of Scotland, his known residence or place of business in England or Ireland should be stated; or else it should be stated that he has no such known residence or place of business. Where the defender has a known residence or place of business in England or Ireland, a copy of the writ and citation requires to be posted to him in a registered letter in addition to the edictal citation. Rules 7 and 15.

Where a party sues or is sued in some special character, such character must be stated, *c.g.* as trustee, tutor, etc., and where necessary the relationship to the defender should be set forth. Form A.

Where the ground of jurisdiction on which the action is based is not apparent from the designation of the parties, it should be set out in the condescendence, not in the instance.

Errors in the name of a defender may, when a case is undefended, lead to reduction of proceedings, *Spalding v. Valentine*, 1883, 10 R. 1092; 20 S.L.R. 724; *Brown v. Rodger*, 1884, 12 R. 340; 22 S.L.R. 225 (errors in Christian names); *Cruickshank v. Gow*, 1888, 15 R. 326; 25 S.L.R. 292 (summons served on man of similar name; interdict refused on ground that he should have defended). A clerical error in the surname of the defenders was allowed to be amended, *Watt v. Smith's Trs.*, 1901, 9 S.L.T. 172; *Riach v. Wallace*, 1899, 1 F. 718; 36 S.L.R. 520; 6 S.L.T. 365. In a defended cause, errors in the instance may be amended under rule 79. In undefended causes errors or defects may be amended under rule 26.

The method of setting forth the instance in various ordinary circumstances may be stated:—

(a) Public Department of the State.

The Right Hon. _____, His Majesty's Advocate, as acting on behalf of His Majesty's Principal Secretary of State for the War Department (*or as the case may be*).

Crown Suits (Scotland) Act, 1857.

(b) Various Public Bodies.

In all cases of description of public bodies, either as pursuers or defenders, the requirement of the statutes incorporating them ought to be followed.

The Local Government Board for Scotland.

The County Council of the County of _____.

The _____ District Committee of the County Council of the County of _____.

The Parish Council of the Parish of _____, in the County of _____.

The Lord Provost, Magistrates, and Councillors of the City of _____.

In the case of Glasgow, "The Corporation of the City of Glasgow."

The Provost, Magistrates, and Councillors of the Burgh of _____, as local authority under the _____ Act in said Burgh.

A. B. [*designation*], as Clerk to and on behalf of the Commissioners of Supply of the County of _____.

The Education Authority of _____.

The Heritors of the Parish of _____, in the County of _____, and A. B., Clerk to and as representing said Heritors, *Bathgate Hers. v. Russell*, 1908, 46 S.L.R. 714; 16 S.L.T. 210, 646.

Members of a corporation called as such cannot disclaim an action so long as a majority insist in the proceedings, *Eadie and Others v. Glasgow Mags.*, 1907, S.C. 207; 45 S.L.R. 171; 15 S.L.T. 612; *Cassidy v. Bilsland, etc.*, 1907, 15 S.L.T. 615.

Survivor of non-gratuitous trustees may sue without a survivorship clause, *Logan v. M'Rostie*, 1908, S.C. 196; 45 S.L.R. 204; 15 S.L.T. 655.

(c) Incorporated Companies.

Here, again, the incorporating statute or charter should be consulted, and its provisions followed.

The _____ Co. Ltd., registered under the Companies Acts, and having their registered office at _____.

The _____ Railway Company, incorporated by Act of Parliament.

The _____ Bank, incorporated by Royal Charter.

The _____ Bank Limited, incorporated under the Companies Acts, and having their registered office at _____.

The _____ Building Association, incorporated under the Building Societies Act, 1874, and having their registered office at _____.

A. B., C. D., and E. F., trustees of the _____ Friendly Society, registered under the Friendly Societies Act, 1875, and having their registered office at _____, on behalf of said Society.

An action directed against the individual members of an incorporated company would rarely be competent, *Blake v. Carron and Forth Shipping Co. Ltd.*, 1923 S.L.T. (Sh. Ct.) 57.

(d) Unincorporated Companies, Committees, and Clubs.

The Act of 1907 by Rule 11, as amended by the Act of 1913, has made it competent for individuals or associations carrying on business under a firm or descriptive name to sue or be sued in the Sheriff Court in such name alone. The provision is as follows:—
“Any individual or individuals or any corporation or association carrying on business under a firm or trading or descriptive name, may sue or be sued in such name without the addition of the name or names of such individual or individuals or any of them, or of any member or official of such corporation or association.” It should be kept in view that where descriptive names alone are used there may be difficulties in executing diligence on the decree. *Aitchison v. M'Donald*, 1911, S.C. 174; 48 S.L.R. 185; 1910, 2 S.L.T. 413.

Unincorporated companies may be set forth as follows:—

A. B. & Co. [*design them*].

A. B. & Co. [*design them*], carrying on business at _____, and A. B. and C. D. [*design them*], the individual partners of said firm, as such partners and as individuals.

A. B. and C. D. [*design them*], carrying on business as _____, at _____, under the firm name of A. B. & Co.

Plotzker v. Lucas, 1907, S.C. 315; 44 S.L.R. 245; 14 S.L.T. 678.

A. B. & Co., sometime _____, at _____, now dissolved, and A. B., C. D., and E. F. [*design them*], the whole partners of said firm, as such partners and as individuals.

The _____ Company, carrying on business as _____, at _____, and A. B., C. D., and E. F. [*design them*], three of the partners of said Company.

The _____ Hockey Club and _____ President, Secretary, _____ Treasurer, and _____ Members of Committee, being the Office-bearers of said Club, and authorised to sue on behalf thereof.

Renton Football Club v. Scottish Football Association, 1891, 18 R. 670; 28 S.L.R. 464. See also *Murdison v. Scottish Football Union*, 1896, 23 R. 449; 33 S.L.R. 337; 3 S.L.T. 273; *Brown v. Scottish Antarctic Expedition*, 1902, 10 S.L.T. 433; *Bridge v. Congregation of S. Portland Street Synagogue and Others*, 1907, S.C. 1351; 44 S.L.R. 645; 14 S.L.T. 446; *Pagan & Osborne v. Haig*, 1910, S.C. 341; 47 S.L.R. 440; 1 S.L.T. 97, 122; *Greengairs Rovers v. Blades*, 1910, 26 Sh. Ct. Rep. 280; *Whitecraigs Golf Club v. Ker*, 1923, S.L.T. (Sh. Ct.) 23.

As to religious bodies, see *Skerret v. Oliver*, 1896, 23 R. 468; 33 S.L.R. 323; 3 S.L.T. 257; *Bannatyne v. U.F. Church of Scotland*, 1902, 4 F. 1083; 39 S.L.R. 793; 10 S.L.T. 200; *Cambuslang, etc., Church Committee v. Bryce*, 1897, 25 R. 322; 35 S.L.R. 245; 5 S.L.T. 240.

Calling a party for “any interest he may have” does not warrant an operative decree against him, *Campbell v. M’Alister*, 1893, 1 S.L.T. 14.

(e) Pupil.

A. B., residing at _____, as tutor and administrator in law for his pupil son C. B.

A. B., residing at _____, widow of _____, as tutrix and administratrix in law of her pupil son C. B.

In the case of a pupil who is illegitimate, or of a pupil who is legitimate but not having any tutor or guardian, the action will be raised in his own name, and a *curator ad litem* appointed, *Cunningham v. Smith*, 1880, 7 R. 424; 17 S.L.R. 269; *Ross’s Trs.*,

1894, 21 R. 995; 31 S.L.R. 812; 2 S.L.T. 149. Doubts expressed upon this practice in *Macdonald's Trustees v. Medhurst*, 1915, S.C. 879; 52 S.L.R. 698; 1915, 2 S.L.T. 25, have been removed by the decisions in *Ward v. Walker*, 1920, S.C. 80; 57 S.L.R. 121; 1920, 1 S.L.T. 2; and *Aitken's Trustees v. Miles*, 1921, S.C. 454; 58 S.L.R. 433; 1921, 2 S.L.T. 32.

If the father is alive and has no adverse interest, an action in the pupil's name is incompetent, *Carrigan v. Cleland*, 1907, 15 S.L.T. 543. As to necessity of curator where father insane see *M'Rae v. Glasgow Corporation*, 1915, 2 S.L.T. 94; *M'Donald v. Glasgow Corporation*, 1915, 2 S.L.T. 249.

(f) Minor.

A. B., son of and residing with C. B., with consent and concurrence of the said C. B. as his curator and administrator in law.

A pupil or a minor cannot be made a defender against his will by the appointment of a *curator ad litem*, *Mackenzie's Trs. v. Mackenzie*, 1908, S.C. 995; 45 S.L.R. 785; 16 S.L.T. 175.

(g) Married Woman.

A. B. or C., wife of and residing with D. C. [*design him*].

A married woman is now capable of suing and being sued as if she were not married. Except in the case of a married woman who is a minor, the curatorial power of the husband is now abolished and an action may be raised by a married woman without the consent of her husband, and in an action against a wife her husband need not be called for his interest. Married Women's Property (Scotland) Act, 1920, sections 2 and 3.

(h) Executor.

A. B. [*design him*], as executor of the deceased _____, conform to confirmation by the Sheriff of _____ dated _____.

(i) Curator bonis.

A. B. [*design him*], as *curator bonis* to _____, sometime _____, conform to Act and Warrant of Appointment by the Lords of Council and Session, dated _____.

3. The Crave.—The crave of the writ corresponds to the conclusion of the Summons in the Court of Session, and may be expressed in the same terms as the prayer in the Sheriff Court Petition in use prior to the Act of 1907.

The prayer or crave shortly contains what the Court is

asked to do, and must, therefore, be definite. If the demand is for payment of money, the sum must be definite; if for implement of a contract, it must state in what way it is to be implemented; if for interdict, the crave must make it clearly apparent to the defender what he is not to do.

Robertson v. Cockburn, 1875, 3 R. 21; 13 S.L.R. 15.

In the case of statutory applications the prayer should follow the precise terms of the statute, *Midlothian C. C. v. Burgh of Musselburgh*, 1911, S.C. 463; 48 S.L.R. 335; 1 S.L.T. 167.

The direction of the note to the form Schedule A of the Act of 1907, before it was altered by the Act of 1913, was to "set forth the specific decree, warrant, or order asked, giving all the particulars to be embodied (if necessary) in an extract." The direction of the Act of 1913 is simply "here set forth the specific decree, warrant, or order asked." The prayer should always be so framed that a clear and intelligible extract can be framed therefrom.

M'Gregor v. M'Kechnie, 1918, 34 Sh. Ct. Rep. 174. Various remedies may be included in one prayer. See also *Glasgow Corporation v. Railwaymen's Club*, 1915, 31 Sh. Ct. Rep. 220; and *Murphy v. Richards & Co.*, 1922, S.L.T. (Sh. Ct. Rep.) 135.

4. Combination of Pursuers and Defenders in one Action.

—This is a subject which requires consideration when framing the crave, and depends upon the legal rights and liabilities of the parties.

(1.) Combination of Pursuers.—The rules of practice in regard to the combination of pursuers in one action may be summed up as follows:—

(1) Joint owners or parties having a joint title to enforce a debt or obligation, can, and often must, join in one action. If a claim is indivisible but vested in several individuals there is legally but one pursuer, or rather *persona*, e.g. trustees. In the case of joint-owners each pursuer constitutes a separate *persona*.

(2) Unconnected pursuers cannot combine in suing for debts due to each one of them, but not due to all.

Fischer & Co. v. Andersen, 1896, 23 R. 395; 33 S.L.R. 306; 3 S.L.T. 230 (five different pursuers sued one debtor for their respective debts; defect cured by withdrawal of four pursuers).

Ballantyne v. Ballantyne's Trs., 1897, 4 S.L.T. 337 (action by widow for liferent provision, and by son for legitim). *Douglas v. Tait*, 1884, 12 R. 10; 22 S.L.R. 18 (two parties holding separate bonds uniting in one poinding of the ground. Action might be made competent by amendment). *Brims & Mackay v. Pattullo & M'Neill & Sime*, 1907, S.C. 1106; 44 S.L.R. 819; 15 S.L.T. 198 (old and new firms suing for debts due each firm). *Paxton v. Brown*, 1908, S.C. 406; 45 S.L.R. 323; 15 S.L.T. 662; *Sime v. J. & A. D. Grimond, Ltd.*, 1920, 1 S.L.T. 270; *Smith Shand's Trustees v. Stewart Forbes*, 1921, S.C. 820; 58 S.L.R. 554; 1921, 2 S.L.T. 151.

(3) Unconnected parties may sue together in one action for protection of a common right or interest, *e.g.* for prevention of pollution of a river, or for the vindication of a right of way.

Duke of Buccleuch v. Cowan, 1876, 4 R. (H.L.) 44; 14 S.L.R. 189 ("contingentia" between the parties); *Torres v. Duke of Atholl*, 1849, 12 D. 328; 22 J. 86; 1852, 24 J. 478; 1 Macq. 61. Unconnected parties cannot combine in suing together for the enforcement of rights which though similar are not identical. Thus proprietors of separate lands cannot combine in an interdict against trespass on the lands of all; each can interdict the trespass as regards his own lands only, *Arthur and Others v. Aird and Others*, 1907, S.C. 1170; 44 S.L.R. 823; 15 S.L.T. 209.

(4) Parties interested to different extents in one and the same debt or obligation can sue together, provided the conclusion of the writ is framed so as to make each one ask only the proportion or amount to which he is entitled.

(5) Where several persons have sustained separate injuries arising from the same wrong or the same injury but in different degrees, they may sue for damages in the same action, provided the crave is made applicable to each pursuer, and limited to the sum claimed by each.

Harkes v. Mowat, 1862, 24 D. 701; 34 J. 348; *Revey v. Murdoch*, 1841, 3 D. 888; *Black v. Fraser*, 1900, 8 S.L.T. 225; *Mitchell v. Grierson*, 1894, 21 R. 367; 31 S.L.R. 301; 1 S.L.T. 448.

In the case above dealt with it is proper and usual for each pursuer to raise a separate action. The question of conjunction may then arise, and in any case arrangement must be made to avoid the duplicating of expense, *Gatt v. Angus Shipping Co.*, 1907, 14 S.L.T. 749; *Wilson v. Rapp*, 1911, S.C. 1360; 47 S.L.R. 257;

1909, 2 S.L.T. 295; *Boyle v. Olsen*, 1912, S.C. 1235; 49 S.L.R. 894; 2 S.L.T. 114; *Lindsey Steam Fishing Co. Ltd. v. Actieselskabet Bonheur*, 1912, S.C. 1235; 49 S.L.R. 894; 2 S.L.T. 114, 347.

Where a father as administrator for his pupil children raises an action of damages for injuries done to them he must conclude for a separate sum in respect of each child, *Gray v. Caledonian Railway Co.*, 1912, S.C. 339; 49 S.L.R. 219; 1 S.L.T. 76. Such a claim cannot be met by a tender of a lump sum for all the children, *Murphy v. Smith*, 1920, S.C. 104; 57 S.L.R. 131; 1920, 1 S.L.T. 25. Pursuers claiming reparation in respect of the death of one person should combine in one action, *Slorach v. Kerr & Co.*, 1921, S.C. 285; 58 S.L.R. 293; 1921, 1 S.L.T. 112.

(6) Where several persons have a claim in respect of one injury to all, arising out of the same wrong, they must sue together.

Pollok v. Workman, 1900, 2 F. 354; 37 S.L.R. 270; 7 S.L.T. 338 (action by one child for solatium for unauthorised post-mortem examination of father). *Allen v. M'Combie's Trs.*, 1909, S.C. 710; 46 S.L.R. 485; 1 S.L.T. 296 (one beneficiary may sue action on breach of trust).

(7) If the acts complained of are not identical, parties separately affected cannot sue together, there being no community of interests.

Gibson v. M'Queen, 1866, 5 M. 113; 39 J. 56; *Killin v. Weir*, 1905, 7 F. 526; 42 S.L.R. 393; 12 S.L.T. 737 (action based on fraudulent statements to same effect but at different times and to different parties—incompetent for them to unite in one writ).

(2.) Combination of Defenders.—The general rules of practice as to a plurality of defenders are as follows:—

(1) Separate unconnected debtors should not be called together in one action. This was formerly competent, and there may be no direct authority against it, but it is not in accordance with modern practice.

Miller & Co. v. Forrester and Others, 1897, 5 S.L.T. 71; *Exchange Loan Co. v. Levenson*, 1905, 21 Sh. Ct. Rep. 133.

(2) In the case of joint obligants, all must be called together as defenders, and each is liable in an equal share of the sum decerned for without any specification of the extent of his liability.

(3) In the case of joint and several obligants, the crave is, "to ordain the defenders, conjunctly and severally." A decree in these terms renders each defender liable for the full amount decerned for.

If the joint and several obligation is not constituted by writing, it is necessary that all the parties liable be called as defenders, *Neilson v. Wilson*, 1890, 17 R. 608; 27 S.L.R. 505. With such a conclusion the action, though failing or settled as regards one defender, may be good against the other, *Reilly v. Smith*, 1904, 6 F. 662; 41 S.L.R. 516; 12 S.L.T. 46; *Robinson v. Reid's Trs.*, 1900, 2 F. 928; 37 S.L.R. 718; 8 S.L.T. 47; *Mackersy v. Davis & Sons, Ltd.*, 1895, 22 R. 368; 32 S.L.R. 277; 2 S.L.T. 515; *Gibson v. Irvine*, 1900, 7 S.L.T. 391; *Douglas v. Hogarth*, 1901, 4 F. 148; 39 S.L.R. 118; 9 S.L.T. 254 (case settled against one wrong-doer; action allowed to proceed against the other); *Baird's Trs. v. Leechman and Others*, 1903, 10 S.L.T. 515; *Gillespie v. Paisley Road Trs.*, 1900, 7 S.L.T. 350 (competent to pronounce a "joint" decree only, under a "joint and several" conclusion). *Rae v. Swanson*, 1905, 21 Sh. Ct. Rep. 291; *Fleming v. Gemmill*, 1908, S.C. 340; 45 S.L.R. 281; 15 S.L.T. 691 (damages for river pollution by three out of six defenders. Observations on "jointly and severally"). *Mackenzie v. Macallister*, 1909, S.C. 367; 46 S.L.R. 288; 1 S.L.T. 62 (count and reckoning conclusions, dismissed as against one defender, held good as regards the others). *Ellerman Lines, Ltd. v. Clyde Navigation Trs., etc.*, 1909, S.C. 690, 694; 1911, S.C. 122; 46 S.L.R. 472; 1909, 1 S.L.T. 249; *Brown & Co. Ltd. v. North British Ry. Co. and Others*, 1909, 1 S.L.T. 545.

As to a conjunct and several crave for delivery, see *Sinclair v. Fleming*, 1909, 25 Sh. Ct. Rep. 268.

(4) Joint delinquents are each liable for the whole damage arising from the combined wrongdoing, and so any may be sued or all may be sued together conjunctly and severally.

Croskery v. Gilmour's Trs., 1890, 17 R. 697; 27 S.L.R. 490; *Sim v. Muir's Trs.*, 1906, 8 F. 1091; 43 S.L.R. 795; 14 S.L.T. 291; *Allen v. M'Combie's Trs.*, 1909, S.C. 710; 46 S.L.R. 485; 1 S.L.T. 296; *Lindoe v. Reid, etc.*, 1908, 15 S.L.T. 1044; *Dunn v. Pearson & Son, Ltd.*, 1917, 1 S.L.T. 314.

(5) If there is more than the one wrong, *i.e.* if some of the defenders are liable in respect of certain wrongful

acts and other of the defenders for certain other wrongful acts, they must not be concluded against conjunctly and severally. They may be called in one writ, but a separate decree must be asked against each of them for the wrong done by each.

Barr v. Neilson, 1868, 6 M. 651 (separate slanders by husband and wife); *Taylor v. MacDougall*, 1885, 12 R. 1304; 22 S.L.R. 869 (illegal acts by creditor and debt collector); *Sinclair v. Caithness Flagstone Co.*, 1898, 25 R. 703; 35 S.L.R. 541; 5 S.L.T. 364 (action for one sum of damages against two successive tenants of a farm); *Hook v. M'Callum*, 1905, 7 F. 528; 42 S.L.R. 399; 12 S.L.T. 770 (separate slanders by husband and wife); *Conway v. Dalziel*, 1901, 3 F. 918; 38 S.L.R. 662; 9 S.L.T. 86; *Smyth v. Muir*, 1891, 19 R. 81; 29 S.L.R. 94; and *Hannay v. Muir*, 1898, 1 F. 306; 36 S.L.R. 228; 6 S.L.T. 251 (separate wrongs by two firms of which one partner common to both); *Brodie v. Coplan*, 1906, 14 S.L.T. 35 (conjunct and several decree granted though no conclusion therefor); *Hughes v. Robertson*, 1913, S.C. 394; 50 S.L.R. 268; 2 S.L.T. 503; *Easton v. Russell*, 1923 S.L.T. (Sh. Ct.) 59.

But to render the action incompetent, the wrongs must be distinct and separable. When the facts, though separate, are connected into one series of wrong, as when all the parties have contributed to the same wrong, the conclusion will be good.

This was held where the conclusion ran "conjunctly and severally, or severally or any one or more of them," *Findlay v. Glennie*, 1894, 1 S.L.T. 482; *Muirhead v. Watt & Wilson*, 1895, 3 S.L.T. 71. Also where it was said that the injury was "through the fault of the defenders or both or one or other of them," *Caughie v. Robertson & Co.*, 1897, 25 R. 1; 35 S.L.R. 3; 5 S.L.T. 139; *Scottish Co-operative Co. Ltd. v. Glasgow Fleshers' Trade Association*, 1898, 35 S.L.R. 645; 5 S.L.T. 263; *Belmont Laundry Co. v. Aberdeen Steam Laundry Co.*, 1898, 1 F. 45; 36 S.L.R. 44; 6 S.L.T. 192; and *Rose Street Foundry, etc., Co. v. Lewis & Sons*, 1917, S.C. 341; 1917, 1 S.L.T. 153 (wrong arising from a joint act); *Goodall v. Forbes*, 1909, S.C. 1300; 46 S.L.R. 934; 2 S.L.T. 177 (slander by parties acting in concert).

5. Interest and Expenses.—The direction in the schedule annexed to the Act of 1876, that where interest and expenses are sought they must be asked in the prayer of the petition, is not repeated in the Act or rules of 1907.

In the event of the action being undefended, interest not prayed for cannot be included in the decree, and cannot be claimed by amendment. If the action is defended, interest not claimed can be added by amendment. Rule 79.

In an action for payment of a debt already constituted, interest should be asked from the date of constitution, which should be stated. If the debt is only constituted by the action, interest should be craved from the date of citation. In claims of damages, interest will run from the date of decree. When interest is craved the rate should be specified.

In any case, interest runs on sums decerned for, whether principal or expenses, from the date of the decree, *Wallace v. Henderson*, 1876, 4 R. 264; 14 S.L.R. 181; *Roger v. J. P. Cochrane & Co.*, 1910, S.C. 1; 47 S.L.R. 5; 1909, 2 S.L.T. 277.

Expenses, if desired, should be expressly craved, in all cases. Rule 23 of the Act of 1907, as amended by the Act of 1913, might be construed to mean that they need not be asked, seeing that in the case of an undefended action the Sheriff is to decern in terms of the crave of the initial writ, "and at the same time or thereafter for expenses," but this construction seems very doubtful. In the form of a writ of removing (Form K), expenses are expressly mentioned, while they are not in Form A, the general form. In a defended action the point is unimportant, as any of the parties may be found liable in expenses to any other parties without a conclusion therefor.

6. Amendments.—As to amending the initial writ in undefended actions, see rule 26 (p. 76), and in defended actions, rule 79 (p. 122).

7. Condescendence.—The Act of 1907, rule 2, as amended by the Act of 1913, directs that "there shall be annexed to the initial writ a statement (in the form of an articulate condescendence) of the facts which form the ground of action, and a note of the pursuer's pleas in law,

which condescendence and note of pleas in law shall be held to constitute part of the initial writ."

8. Pleas in Law.—After the condescendence there follows a note of the pursuer's pleas in law.

The plea in law for the pursuer is a statement of the proposition or legal principle, which when applied to the particular facts of the case in question justify the pursuer's demand for decree. It ought to be short and concise. Where separate legal arguments are raised, each one should be set forth clearly in a separate plea. See observations on p. 87 as to preparation of the record.

9. Authentication of the Writ.—The only direction as to the authentication of the writ is contained in the form annexed to the Act of 1907 (Form A), as amended by the Act of 1913. According to the style the crave is signed by the pursuer, who adds the word "pursuer," or by an agent, who adds his designation and business address and the words "pursuer's agent." The term "agent" is defined (Act of 1907, sec. 3 (*g*)) as "a law agent enrolled in terms of the Law Agents (Scotland) Act, 1873." It is thought that the law agent signing must be also enrolled in the Sheriff Court in which the action is raised.

Muir, 1911, 27 Sh. Ct. Rep. 327.

WARRANT OF CITATION

Upon the writ being presented an interlocutor containing warrant of citation is written thereon. The interlocutor may include a warrant to arrest on the dependence, an interim interdict, sequestration, or any other competent order. There are two forms of warrant, the one applicable to actions which are to follow the summary procedure, and the other to actions which are to follow the ordinary procedure.

Warrant in Summary Causes, Summary Removings, and Summary Applications.— In the following cases, namely :—

- (a) Summary causes;
 - (b) Summary removings;
 - (c) Summary applications, when citation is necessary;
- and

(d) Cases under the Workmen's Compensation Act—

The warrant appoints the defender to answer at a place and on a day and hour stated, under certification. Rule 4

(a). Form B, Appendix I., p. 331.

Warrant in all other Causes.— The warrant, in all causes other than those above specified, appoints the defender to be cited on an *induciæ* specified, and appoints him, if he intends to defend, to lodge a notice of appearance, within the *induciæ*. Rule 4 (b). Form C, Appendix I., p. 331.

The warrant for citation may be signed by the Sheriff or Sheriff-Substitute. It may be signed by the Sheriff-Clerk, unless it also contains an order for shortening or lengthening the *induciæ*, or for interim interdict, sequestration, or other order, excepting a warrant to arrest, in which cases it cannot be signed by him. Rule 7.

Induciæ.— Actions proceed upon the following *induciæ*, namely :—

- (a) Seven days when the defender is within Scotland.
- (b) Fourteen days when he is in Orkney or Shetland, or in any other island within Scotland or is furth of Scotland. Rule 5.

In actions against persons furth of Scotland, warrant to cite edictally requires to be granted. Rules 7 and 15.

The Sheriff may shorten or extend the *induciæ*, but not so as to be in any case less than forty-eight hours. Rule 6.

See *Muir v. Nisbet*, 1881, 19 S.L.R. 59.

By the interpretation clause, sec. 3 (d), "action" includes "every civil proceeding," but it is evident that the *induciæ* specified

by rule 5 is not intended to apply to every form of proceeding. In summary applications generally a shorter *induciae* will be fixed.

SERVICE ON DEFENDER

The writ is executed by service on the defender of a copy thereof, and of the warrant of service, together with a schedule of citation, signed by the party serving it.

There is no statutory provision as to what is to be served on a defender, except what is set forth in the form of the order for service. The copy writ will include the condescendence and pleas in law.

Discrepancies between the copy served and the principal writ will have no effect if the defender appears; if he does not, the result will depend upon the nature of the errors, *Lochrie v. M'Gregor*, 1911, S.C. 21; 48 S.L.R. 41; 1910, 2 S.L.T. 251 (petition for sequestration).

The name and address of the pursuer's agent must be upon the back of every service copy. Rule 3.

An execution of service has to be appended to or endorsed upon the initial writ, stating the method by which it was executed. This is signed by the officer or law agent executing it, and also by a witness when executed by an officer. Rules 8 and 9. Forms D and E, p. 332.

The date of execution is the date of the commencement of the action, *Alston v. MacDougall*, 1887, 15 R. 78; 25 S.L.R. 74; *Gibson v. Clark*, 1895, 23 R. 294; 33 S.L.R. 174; 3 S.L.T. 197 (date of execution held date of service, though service copy bore another date).

There does not appear to be any rule as to how long a warrant of service remains valid. Probably year and day is the limit.

The service can be made in one or other of the following ways:—

1. By a sheriff-officer delivering or tendering the copy writ and warrant and a schedule of citation to the defender wherever found, personally, in presence of one witness, who signs the execution along with the officer. Rule 9.

The officer may be an officer of the Court which grants the

warrant, or of the jurisdiction within which it is executed, no endorsement being necessary. Rule 10.

If the writ is delivered or tendered and refused, the service is effectual whatever illegalities may exist in the methods employed to effect it, *International Exhibition v. Bapty*, 1891, 18 R. 843; 28 S.L.R. 648.

As to service of Sheriff-Court writs by messenger-at-arms, see *Hamilton v. Bain*, 1857, Guthrie's S.C. Cases, vol. i. 405; *Cheyne v. M'Gungle*, 1860, 22 D. 1490; *Campbell v. Duncan*, 1901, 17 Sh. Ct. Rep. 155; *Sutherland v. Standard Life Insur. Co.*, 1902, 4 F. 957; 39 S.L.R. 769; 10 S.L.T. 110.

In rule 9 the term "officer" is used, while rule 10 refers to "officer of the Court," and the forms of citation and execution, D, E, F, and G, refer to "sheriff-officer."

2. If the defender is not found personally, after inquiry, by the officer leaving the copy with a person (termed in the execution "a servant") in his dwelling-house to be given to him, also in presence of a witness. Act 1540, c. 75.

3. If access to the house cannot be obtained after giving six audible knocks, by the officer affixing a copy to the door, or putting it in the keyhole in presence of a witness.

4. Citation of Companies.—This matter is expressly dealt with by the Act, rule 11, as amended by the Act of 1913, which embraces companies proper, and also individuals carrying on business under a firm or descriptive name. It applies to "any individual or individuals, or any corporation or association carrying on business under a firm or trading or descriptive name," and proceeds: "Citation in any action (*i.e.* presumably against any party falling within the above category) may be made at the principal place where such business is carried on (including the place of business or office of the clerk or secretary of any corporation or association) when such place is within the jurisdiction of the Sheriff Court in which such action is brought, or otherwise at any place of business or office at which such business is carried on within the jurisdiction of such Sheriff Court."

Rule 11 of the 1907 Act before its amendment expressly allowed

citation at any place of business within the jurisdiction where the principal place of business was outwith the jurisdiction, and this is probably the intention of the Act of 1913.

In the case of public companies and corporations, the method of citation prescribed in their constitution or incorporating statute may be followed. In the case of registered companies service may be made at the registered office. Companies (Consolidation) Act, 1908, 8 Edw. VII. c. 69, sec. 116. *Brown & Critchley, Ltd. v. Decorative Art Journals Co. Ltd.*, 1922, S.C. 192; 59 S.L.R. 241; 1922, S.L.T. 117.

Where the defender is out of the jurisdiction of the Court granting the warrant, but within that of another Sheriff Court, service may be made by an officer of either Court, without endorsement by the Sheriff-Clerk of that Court. Rule 10.

5. Where the defender is furth of Scotland, the warrant will contain authority to cite edictally, and service will be made by delivery of a copy of the writ and warrant at the office of the Keeper of Edictal Citations in Edinburgh, or by sending to the Keeper in a registered post letter a certified copy of the warrant, the *induciæ* being fourteen days. Rules 7 and 15. In the case of the copy being sent by post, the Keeper has to acknowledge the receipt. Rule 15.

The requirement of the "certified" copy seems unintelligible.

If the defender has a known residence or place of business in England or Ireland, a copy of the writ and of the citation, on the same *induciæ*, requires to be posted to him in a registered letter. The execution must state that this has been done, and the post-office receipt has to be lodged. Rule 15.

Gibson v. Clark, 1895, 23 R. 294; 33 S.L.R. 174 (citation on petition for appointment of manager of farm, of which tenant said to have gone abroad, not served edictally, sustained).

As to the method of citation where it is doubtful whether the defender is furth of Scotland or not, see *Morrison v. Vallances' Exrs.*, 1907, S.C. 999; 44 S.L.R. 790; 15 S.L.T. 209. In practice, difficulties may be avoided by serving both at the last dwelling-place and also edictally.

6. Where the defender is a minor, service is made on him in ordinary form, and also on his father, as his curator-

at-law; or on the minor and his tutors and curators, if known to the pursuer, or, if not known, upon the minor and upon his tutors and curators edictally. Rule 14.

In all the above cases the execution must be signed by the officer and the witness, and must specify whether the citation was personal, or, if otherwise, the mode of citation. Rule 9.

Postal Citation.—In each of the cases given above, the service may also be executed by registered letter, containing the copy writ to be served, with citation subjoined. Citation Amendment (Scotland) Act, 1882, 45 & 46 Vict. c. 77. This form of service may be used either (a) by an officer of the Court from which the warrant is issued or of that in which it is to be executed (rule 10), or (b) by an enrolled law agent.

Enrolled law agent means, it is thought, enrolled in the Court issuing the warrant, *Kerr*, 1906, 14 S.L.T. 412; but see *Mouat v. Lee*, 1891, 18 R. 876; 28 S.L.R. 695. Rule 10 expressly empowers an officer of the jurisdiction in which a writ is to be executed to execute service, but it would appear not to apply to service by a law agent enrolled in that jurisdiction.

Service by a law agent who was a party to the cause was held valid in *Addison v. Brown*, 1906, 8 F. 443; 43 S.L.R. 335; 13 S.L.T. 855.

The form of a schedule of citation by an officer or law agent is given in Form D, Appendix I., p. 332. Rule 8.

In service by post the following requisites have to be observed:—

(a) The letter must be sent to the defender “at his known residence or place of business,” or to his “last known address, if it continues to be his legal domicile or proper place of citation.” Act of 1882, sec. 3.

It is thought that the Act merely affects the method of citation, and that the intention is that the letter should be addressed to the place at which service would be legally effected if performed by an officer in person and not by post. Where, however, a defender had his place of business and also his residence within the sheriff-

dom, citation at the place of business was held sufficient, *Rachkind v. Donald & Sons*, 1916, S.C. 751; 1916, 1 S.L.T. 416.

(b) The citation or notice must specify the date of posting, and state that the period of appearance is reckoned from that date. Act of 1882, sec. 4 (1).

(c) The *induciæ* are reckoned from a period of twenty-four hours after the time of posting. Act of 1882, sec. 4 (2).

The evident inconsistency of the last two provisions was commented on in *Addison v. Brown*, 1906, 8 F. 443; 43 S.L.R. 335; 13 S.L.T. 855, when it was held that a schedule stating that the period of appearance was reckoned from the date of posting was in conformity with the Citation Act. The form of citation (Form D) given in the Act of 1907 does not remove the confusion, but rather adds to it by directing "if necessary add (the *induciæ* is reckoned from twenty-four hours after date of posting)."

The form of citation is Form D, Act of 1907, p. 332.

(d) An execution of the citation has to be endorsed upon or appended to the initial writ. The form is Form E. Act of 1907, p. 332.

The post-office receipt is to "accompany" the execution. Act of 1882, sec. 4 (3). It should be affixed to it.

The execution by post does not require a witness, but must be signed by the officer or law agent, as the case may be.

The certificate by an apprentice to a law agent was held insufficient, *Wilson*, 1885, 13 R. 342; 23 S.L.R. 227.

The execution of a law agent is for all purposes equivalent to the execution of an officer of Court. Act of 1882, sec. 4 (3).

The execution when *ex facie* regular can only be challenged by reduction, *Stewart v. Macdonald*, 1860, 22 D. 1514; *Gibson v. Clark*, 1895, 23 R. 294; 33 S.L.R. 174; 3 S.L.T. 197; *Tait v. Johnston*, 1891, 18 R. 606; 28 S.L.R. 431. See also *Macgregor v. M'Laughlin*, 1905, 8 F. 70; 43 S.L.R. 77; 13 S.L.T. 548. Objections which would sustain a reduction may also be pleaded *ope exceptionis*. Act of 1907, rule 50.

(e) A notice has to be written on the back of the registered letter in the following or similar terms:—

This letter contains a citation to (*specify Court*). If delivery of the letter cannot be made, it is to be returned immediately to (*give the official name and office or place of business of the Clerk of Court*). Act of 1882, sec. 4 (4).

(f) If for any reason delivery of the letter is not made, it is to be returned immediately through the post office, with the reason of failure to deliver marked thereon, to the Clerk of Court, who intimates to the party serving it; and if the warrant is issued by the Sheriff, the clerk also presents it to him. The Sheriff may order service of new, and, if necessary, appoint a new diet of appearance. Act of 1882, sec. 4 (5).

(g) If the letter is not returned, the posting constitutes legal and valid citation, unless the person cited proves that the letter was not left or tendered at his known residence or place of business. Act of 1882, sec. 3.

Where a person duly authorised received the registered letter, the citation was held good, *Steuart v. Ree*, 1885, 12 R. 563; 22 S.L.R. 366.

The date of the posting is the date of the citation and of the commencement of the action, *Alston v. MacDougall*, 1887, 15 R. 78; 25 S.L.R. 74.

(h) If the Sheriff is satisfied that the letter was tendered at the proper address, but refused by the defender, he may hold the tender as good citation. Act of 1882, sec. 4 (5).

Roberts v. Crawford, 1884, 22 S.L.R. 135; *Spaulding v. Marjoribanks*, 1903, 11 S.L.T. 71; *Busby v. Clark*, 1904, 7 F. 162; 42 S.L.R. 142; 12 S.L.T. 516; *Mathison v. Fraser*, 1911, 2 S.L.T. 493 (suspension and interdict).

Postal citation is optional for summonses, warrants of citation, warrants of service, and judicial intimations, but the fees are in all cases limited to those specified in Schedule 2 of the Act of 1882, unless the Sheriff considers it not expedient that service should have been made postally. Act of 1882, sec. 6.

Macleod v. Davidson, 1887, 14 R. 298; 24 S.L.R. 224 (party resident beyond postal district; expense of citation by officer allowed).

Re-service.— If it appear to the Sheriff that there has been any irregularity in the service on a defender who does not appear, he may authorise service of new, upon such conditions as seem just. Act of 1907, rule 12.

Objections to Citation.— A party who appears may not state any objections to the regularity of the execution of service, and his appearance is deemed to remedy any defect in the service, unless where jurisdiction has been constituted by citation or by arrestment *ad fundandam jurisdictionem*. Act of 1907, rule 13.

National Cash Register Co. v. Hunter, 1916, 32 Sh. Ct. Rep. 121.

Acceptance of Service.— Formal service may be dispensed with by the defender or his agent writing and signing an acceptance of service upon the principal writ.

This must be holograph or tested. If granted by an agent it may be in the following form :—

(Place and date.) On behalf of and as authorised by the within
designed _____, Defender, I hereby accept
service of the foregoing writ.

CHAPTER VII.

ARRESTMENT ON DEPENDENCE OF ACTION

ARRESTMENT on the dependence is competent only in an action containing conclusions for payment of a sum of money other than expenses.

Stafford v. M'Laurin, 1875, 3 R. 148; 13 S.L.R. 82. Rule 45.

If prayed for in the writ, the warrant of service thereon may include a warrant to arrest on the dependence. Forms B and C, p. 331.

Where a warrant to arrest had been granted although there was no crave for it in the petition, objection to the arrestment following thereon was not sustained, *Muir & Son v. Robert Muir & Co. Ltd.*, 1910, 1 S.L.T. 414.

If warrant to arrest has not been craved in the writ, a precept of arrestment may be obtained from the Sheriff-Clerk. Rule 46, Act of 1913.

A copy of the initial writ and warrant thereon, certified by the pursuer or his agent, is sufficient warrant for arrestment. Rule 46.

A precept of arrestment may be issued by the Sheriff-Clerk on production of either—

(a) A writ containing pecuniary conclusions upon which a warrant of citation has been granted; or,

(b) A liquid document of debt. Rule 46.

The precept of arrestment is prepared by the agent and signed by the Sheriff-Clerk. An application to the Court therefor is not necessary, as it is in the case of an application for warrant to arrest to found jurisdiction.

By virtue of either the warrant or the precept, the

pursuer can arrest in security debts or other personal property due, or belonging, to the defender in the hands of third parties. The arrestment must be served by a sheriff-officer in the same way as a writ, rule 10; but postal service is not competent. Rule 11, dealing with corporations, etc., does not apply to the case of arrestment on the dependence. If the schedule is not personally served upon the arrestee, a copy of the schedule must also be sent by registered letter to the arrestee at his last known place of abode, or if such place of abode is unknown, or if the arrestee is a firm or corporation, to the arrestee's principal place of business, if known, or if not known, to any known place of business. The officer has in his execution to certify that this intimation has been given, and to specify the address. Rule 126.

The execution of an arrestment on the dependence has to be reported by the party using it, or his agent, "forthwith" to the Sheriff-Clerk. Rule 127.

As to meaning of "forthwith," see *Johnson v. Johnson*, 1910, 26 Sh. Ct. Rep. 134; *A. B. v. E. F.*, 1911, 26 Sh. Ct. Rep. 172.

If the arrestment has to be used outwith the sheriffdom from which it is issued, it does not require endorsement by the Sheriff-Clerk of the county where it is to be used. Rule 10.

The procedure in arrestment in security is the same as in an arrestment in execution.

An arrestment used prior to service of the writ falls unless the writ is served within twenty days from the date of execution of the arrestment, and in the case of defended actions tabled within twenty days of the first ordinary Court day occurring subsequent to the expiry of the *induciæ*, and in the case of undefended actions, decree in absence be taken within twenty days of the expiry of the *induciæ*. Rule 127.

The amendment of rule 127 by the Act of 1913 has removed the defect dealt with in *Raimes, Clark & Co. Ltd. v. Glass*, 1909,

25 Sh. Ct. Rep. 309, and *Johnson v. Johnson*, 1910, 26 Sh. Ct. Rep. 134.

An arrestment may, on application by the defender to the Sheriff, be loosed or restricted, on payment, consignation, or caution, or it may be recalled if used oppressively. An application has to be lodged and intimated, answers are ordered, and the matter is disposed of summarily. Debtors Act, 1838, sec. 21.

Appeal from the Sheriff-Substitute to the Sheriff against an interlocutor dealing with arrestments was held competent in *Johnson v. Johnson*, 1910, 26 Sh. Ct. Rep. 134; *A. B. v. C. D.*, 1910, 26 Sh. Ct. Rep. 172. But otherwise *M'Garva v. M'Brierley*, 1917, 33 Sh. Ct. Rep. 283.

This section, which is not repealed by the Act of 1907, appears to enjoin a certain procedure, and the application would not seem, strictly, to fall under the definition of "summary application." Act, sec. 3 (p).

As to expenses of proceedings to recall forming part of expenses of process, see *Muir & Co. Ltd. v. United Collieries, Ltd.*, 1908, S.C. 768; 45 S.L.R. 569; 15 S.L.T. 1037.

Gordon v. Bruce & Co., 1897, 24 R. 844; 34 S.L.R. 633; 5 S.L.T. 13 (questions disposed of without answers). It is a common practice when consignation is made, for the Sheriff to recall on motion, without a petition.

The question as to whether a debtor's funds have been attached cannot be competently tried in a petition for recall, *Vincent v. Chalmers' Tr.*, 1877, 5 R. 43; 15 S.L.R. 27; *Brand v. Kent*, 1892, 20 R. 29; 30 S.L.R. 70; "*Nordsoen*" v. *Mackie, Koth & Co.*, 1911, S.C. 172; 48 S.L.R. 91; 1910, 2 S.L.T. 292.

Arrestments on the dependence prescribe in three years from the date of the decree in the action. Debtors Act, 1838, sec. 22.

As to ground of recall see *Van Uden v. Burrell*, 1914, 30 Sh. Ct. Rep. 224.

As to arrestment of a ship on the dependence in order to establish a maritime lien, see *Clan Line Steamers Ltd. v. Earl of Douglas Steamship Co. Ltd.*, 1913, S.C. 967; 50 S.L.R. 771; 2 S.L.T. 57.

As to expense of arresting ship see *Halton v. Aktieselskabet Hansen*, 1919, S.C. 154, 56 S.L.R. 100; 1918, 2 S.L.T. 320.

Where a plea of no jurisdiction is sustained, and the action instead of being dismissed is, in the exercise of the discretion of the Sheriff under rule 21, transferred, an arrestment used on the dependence of the action would not be affected. The Act does not deal with this point.

CHAPTER VIII.

PROCEDURE IN UNDEFENDED CAUSE

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1. Amendment of Writ.—The Sheriff may allow any error or defect in the initial writ in an undefended action to be amended. Rule 26.

It will be noted that the extent of amendment in undefended causes is very limited in contrast to the powers of amendment authorised under rule 79 in the case of defended actions.

In the case of such amendment—

(a) Service of the amended writ may be ordered and a new period of appearance appointed.

(b) The expense of such amendment is not chargeable against the defender.

(c) Diligence used on the dependence of the action is not thereby validated so as to prejudice creditors of the defender.

(d) The amendment is operative to the effect of obviating objections to diligence by the defender or persons representing him by a title, or in right of a debt contracted subsequent to the diligence.

(e) Diligence competent upon the original writ is competent on the amended writ. Rule 26.

What is intended to be specially provided for by the last clause, which is not in the corresponding section of the Act of 1876, is not clear. *Fischer & Co. v. Andersen*, 1896, 23 R. 395; 33 S.L.R. 306; 3 S.L.T. 230 (arrestment on incompetent action is invalid, though action thereafter made competent by amendment).

2. Decree in Absence.—Where a defender does not lodge a notice of appearance in an ordinary cause or answer, *i.e.* appear at the diet to which he has been cited in a summary cause, the pursuer may take decree, in terms of the crave of the initial writ, at any time after expiry of the *induciæ*. Rule 23, as amended by Act of 1913.

Enrolment of a cause for decree is not necessary. The opinion has been expressed that tabling of an undefended action is incompetent, *Raimes, Clark & Co. Ltd. v. Glass*, 1909, 25 Sh. Ct. Rep. 309.

Where a defender did not appear, the pursuer, who continued the cause till a fixed date, was allowed to take decree in absence on an earlier day, *Campbell & Henry v. Hunter*, 1911, 27 Sh. Ct. Rep. 26.

The expression “at any time,” in rule 23, does not, it is thought, override the provisions of rule 101, to the effect that a process falls asleep in a year and day after an interlocutor has been pronounced or the common-law rule that an action falls if not enrolled within year and day after expiry of the *induciæ*.

M’Kidd v. Manson, 1882, 9 R. 790; 19 S.L.R. 603; *Belfrage v. Blyth*, 1910, 26 Sh. Ct. Rep. 295.

The prayer of the writ may be restricted by endorsement on the writ, or by a minute (rule 23), and decree granted as restricted.

Decree for expenses may be taken at the same time or thereafter. The expenses are taxed before decree, and the amount is certified by the Auditor by note endorsed on the initial writ. Rule 23.

The warrant for taxation is a note by the Sheriff-Clerk on the writ stating that no appearance has been entered.

In the following cases decree in absence cannot be taken *de plano* in terms of the crave of the writ, *viz.* :—

(a) Where there has been a payment to account since the date of service, in which case the minute endorsed on the writ should crave decree for the restricted amount due.

(b) Where there are alternative conclusions the crave for decree must state which one is selected.

(c) In actions for payment of a law agent's account, the account sued for must first be remitted to the Auditor for taxation.

(d) In actions of separation and aliment, adherence and aliment, or interim aliment, or actions regulating the custody of children. In these actions the facts must be established, even though no opposition is made. Act of 1907, rule 23, as amended by Act of 1913.

A written crave for decree is endorsed on the initial writ by the pursuer or his agent. Rule 23.

A suggested form is—"In respect that the defender has not entered appearance (*or* has not answered) in terms of the foregoing deliverance, the pursuer craves decree in terms of the crave of the initial writ, with expenses (but under deduction of the sum of £ paid to account, *or* in terms of the first alternative crave of the initial writ, *or otherwise, as the case may be*)."

3. Reponing.—At any time before implement of a decree in absence, the defender may apply to be reponed. Rule 27. This is effected by the defender lodging and serving a note setting forth—

(a) A statement of his proposed defence; and

(b) An explanation of his failure to appear, and along therewith consigning £2. Rules 27 and 28.

What is evidently intended is that such a statement should satisfy the Sheriff that there is a possible defence, and that the motion is not made merely for delay.

Thow v. Thow, 1908, 24 Sh. Ct. Rep. 329; *Logan v. Miller*, 1911, 27 Sh. Ct. Rep. 25; *Fraser v. Savings Investment Trust, Ltd.*, 1912, 28 Sh. Ct. Rep. 224; *Nisbet v. Macleod*, 1923, 29 Sh. Ct. Rep. 248.

The note is served (rule 27), and after intimation to the pursuer or his agent it operates as a sist of diligence. Rule 32.

If the Sheriff is satisfied with the defender's explanation, he recalls the decree so far as not implemented. Rule 29. If the Sheriff is not satisfied with the defender's explanation, he may refuse the reponing note. Rule 30. In

either case the pursuer is entitled to uplift the consigned money. Rule 31.

It was held that this sum is not a penalty, but a payment to account of expenses, *A. & Co. v. B.*, 1911, 27 Sh. Ct. Rep. 214. But see *contra Hart v. Barras*, 1922, 38 Sh. Ct.^v Rep. 27.

An interlocutor or order recalling, or incidental to the recall, of a decree in absence, is final, and is not subject to review. Rule 33.

An interlocutor refusing a reponing note may be appealed to the Sheriff or to the Court of Session (secs. 27 and 28 of Act of 1907 as altered by Act of 1913).

Davison v. Anderson, 1921, S.C. 369; 58 S.L.R. 251; 1921, 1 S.L.T. 214.

4. Extract.—A decree in absence can be extracted on the expiry of seven days from its date. Rule 24.

The lodging of a reponing note apparently does not prevent the issue of extract.

A decree in absence, not recalled or brought under review by suspension or reduction, becomes final, and is entitled to all the privileges of a decree *in foro* after six months from its date, or from the date of a charge under it, provided the service of the writ or of the charge has been personal, or in any event after the lapse of twenty years from its date. Rule 25.

Bryson v. Belhaven Engineering, etc., Ltd., 1908, 15 S.L.T. 1043.

5. Failure to lodge Defences.—The situation where appearance has been entered but defences have not been lodged, is not specifically dealt with by the Act. In such a case the pursuer can obtain a decree by default under rule 56, the defender having the opportunity of asking leave to lodge defences. See p. 92.

Reponing is not competent against such a decree, nor are the beforementioned provisions as to decree in absence applicable. It is a decree *in foro*, and can only be opened up by appeal in the same way as any other final judgment *in foro*.

As to prorogation of the time for lodging defences under rule 56, see p. 93.

CHAPTER IX.

STEPS OF PROCEDURE IN DEFENDED ORDINARY CAUSE

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I. ENTERING APPEARANCE

IF the defender intends to state a defence to the action, he is required by rule 22, as amended by the Act of 1913, before the expiry of the *induciæ*, to exhibit to the Sheriff-Clerk the service copy of the writ and to lodge with him a notice in the form given in the rule.

The form is as follows :—

(Place and date.)

C. D. [*design him*], Defender, intends to defend the action against him at the instance of A. B. [*design him*].

C. D., Defender, or X. Y. [*add address*], Defender's Agent.

The object of exhibiting the service copy writ is to inform the Sheriff-Clerk of the expiry of the *induciæ*, so that he may enrol the case for tabling.

It may be competent under rule 56 for the Sheriff to grant leave to lodge a notice of appearance beyond the specified time. If it is not competent, or if the Sheriff refuses to prorogate the time for entering appearance or to allow defences to be received, although appearance has not been timeously entered, then apparently a defender who intends to defend, but who fails to enter appearance time-

ously, has to wait until decree in absence has been pronounced, when he can take steps to be reponed.

As to withdrawal of notice of appearance, see *Cuthbert v. Stuart Gray*, 1904, 21 Sh. Ct. Rep. 31 (opinion that defender not entitled to withdraw because pursuer entitled to take decree in respect of no defences which would be a decree *in foro*, instead of a decree in absence).

II. TABLING CASE

Where appearance has been entered, the Sheriff-Clerk is directed to enrol the case for tabling on the first Court day occurring after the expiry of the *induciæ*. Rule 34.

It has been held by the Sheriff of Lanarkshire that "tabling" means the lodging of the writ by the agent personally at the calling of the case in Court, and that previous lodging of the writ with the Sheriff-Clerk is not compliance with the Act, *Higgins v. Atkinson*, 1908, 24 Sh. Ct. Rep. 385. This practice has been generally adopted.

After tabling, the initial writ remains in the custody of the Sheriff-Clerk unless the Sheriff grants a special order to the contrary. Rule 16.

Documents founded on in the condescendence should be lodged along with the writ. Rule 47.

III. LODGING DEFENCES

Defences are to be lodged at the tabling of the action, or within six days thereafter. Rule 42, Act of 1913.

The defences should bear distinctly for whom they are lodged.

The time allowed for lodging applies irrespective of there being a sitting of the Court within the period, and in vacation as well as session, *Lord Brooke v. M. of Huntly*, 1911, 49 S.L.R. 71; 2 S.L.T. 382.

Productions founded on should be lodged with the defences. Rule 47.

As to prorogation of the time for lodging defences, see p. 93.

A party who has not been called as a defender, but who has an interest in the cause, may be allowed to lodge defences, *Ross v. Ross*, 1909, 2 S.L.T. 117; *Gas Power, etc., Co. v. Power Gas*

Corporation, 1911, S.C. 27; 48 S.L.R. 38; 1910, 2 S.L.T. 241; *Muir v. Glasgow Corporation*, 1917, 2 S.L.T. 106.

As to pleading *ope exceptionis* in defences, see p. 22.

It is irregular for a defender to appear by minute instead of by lodging defences, *Campbell v. Ayr County Council*, 1905, 13 S.L.T. 193; *Macpherson v. Macdonald & Co.*, 1905, 12 S.L.T. 824. But there are circumstances in which it would be proper for a party called in an action and having no interest to litigate, to state his position to the Court in a minute. Defences may be withdrawn by minute, *Ower v. Crichton*, 1902, 10 S.L.T. 279.

Where authority to lodge defences is disputed, time should be given for the production of a mandate, *Fischer v. Anderson*, 1896, 23 R. 395; 33 S.L.R. 306; 3 S.L.T. 230.

Where there are several defenders, each may lodge separate defences, but they may have to combine in conducting the litigation in view of questions of expenses which may arise. See p. 256.

The defences consist of—(1) Articulate answers to the pursuer's condescendence; (2) Where necessary, a statement of facts founded on, set forth succinctly. Rule 43; and (3) A note of the defender's pleas in law. Rule 46.

In each answer the defender should either absolutely or with explanations admit or deny the statements in the corresponding article of the condescendence.

Rule 43 bears, "Where necessary, or where a counter claim is made, a separate statement of facts founded on by the defender, which shall be set forth succinctly, shall be appended to the defences."

A separate statement of facts is desirable—(a) When the defender's case does not consist merely of denial of the pursuer's averments, but is based upon facts which the pursuer does not disclose; or (b) when the defence raises what is practically a separate case; or (c) where the pursuer's case is stated in such a way that the defender cannot meet it categorically, and wishes to state the facts by separate narrative in his own fashion; or (d) where there are material facts relied on by the defender which he wishes to have explicitly answered by the pursuer; and (e) necessarily by rule 43, where a counter claim is made.

The whole defence, whether preliminary or on the merits, must be stated at once, *Thorburn v. Dempster*, 1900, 2 F. 583; 37 S.L.R. 415; 7 S.L.T. 364.

Counter Claim.—A counter claim can be stated by the

defender in his defences, and dealt with as if it had been stated in a substantive action; and decree may be granted for it in whole or in part, or for the difference between it and the claim sued on. Rule 55.

It is evidently desirable that a defender who pleads a counter claim in his defences shall state therein precisely that he craves a decree, and the amount thereof. A separate statement of facts is required by rule 43. The facts and pleas in support of the counter claim should be stated in all respects as if a substantive action were raised. This method of stating a counter claim is a rule of procedure only, and does not in any way affect the law of compensation or set off, *Christie v. Birrell*, 1910, S.C. 986; 47 S.L.R. 853; 2 S.L.T. 182. See *Hinchcliffe & Co. v. Binning*, 1910, 26 Sh. Ct. Rep. 181; *Jack & Co. v. Hutchison, Ltd.*, 1911, 27 Sh. Ct. Rep. 96; *Clingans' Trs. v. M'Kinnon*, 1911, 28 Sh. Ct. Rep. 35; *Lohmann v. Lohmann Manufacturing Co.*, 1912, 28 Sh. Ct. Rep. 191; *British Motor Body Co. Ltd. v. Thomas Shaw (Dundee), Ltd.*, 1914, S.C. 922; 51 S.L.R. 812; 1914, 2 S.L.T. 131; *Aarons & Co.*, 1913, 29 Sh. Ct. Rep. 315; *Stevenson v. Fraser & Carmichael*, 1914, 30 Sh. Ct. Rep. 277; *Lindsay v. The Scottish Motor Traction Co.*, 1915, 31 Sh. Ct. Rep. 175.

A counter claim to be competently dealt with under this rule must be one that can be set off pecuniarily against the sum sued for, *Macnab v. Nelsons*, 1909, S.C. 1102; 46 S.L.R. 817; 2 S.L.T. 68; *Christie v. Birrell*, *supra*.

It is thought that a counter claim could not be insisted in, when the action has been abandoned, *Craw v. Malcolm*, 1908, 24 Sh. Ct. Rep. 268. *See also: Arrows & Melrose & Mitchell 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 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There may also be lodged—

(d) Any productions to which reference is made in the pleadings, along with a separate inventory thereof. Rule 47.

The date of lodging each pleading has to be endorsed thereon by the Sheriff-Clerk. Rule 18.

2. Borrowing Process.— The initial writ, after tabling, remains in the custody of the Sheriff-Clerk unless the Sheriff grants a special order to the contrary. Rule 16.

Previous to the Codifying Act of Sederunt of 1913 the necessity for such an order arose when the pursuer required to produce the writ in the Bill Chamber with a view to obtaining letters of inhibition or arrestment. By the C.A.S., E, iii., 2, a fiat may be granted on production of a copy of the writ certified by the clerk to the process.

The principal interlocutor sheets and the borrowing inventory also remain in the custody of the Sheriff-Clerk. Rule 18.

The certified copy of the initial writ may be borrowed by the agent of any party to the cause. Rule 45.

A process may be borrowed only by an agent entitled to practise in the jurisdiction, or by his duly authorised clerk. Rule 16.

The restriction of sec. 15 of the Law Agents Act of 1873, which makes it necessary that an agent borrowing a process must have a place of business within the jurisdiction, does not seem to be affected by the above rule. All remedies (including caption) competent to enforce the return of a borrowed process may proceed on the warrant of the Court from whose custody the process was obtained, and that whether the borrower is or is not resident within its jurisdiction. Rule 16, as amended by Act of 1913.

An agent failing to return a process, or any part thereof, for any diet at which it is required, may be fined £1. On cause shown, the Sheriff who granted it may recall an order imposing a fine. Such orders are not subject to review. Rule 57.

See as to documents taken away wrongfully, *Watt v. Thomson*,

1868, 6 M. 1112; 8 M. (H.L.) 77; 11 M. 960; 1 R. (H.L.) 21; *Gregson v. Grant*, 1910, 48 S.L.R. 6; 2 S.L.T. 16.

3. Loss of Process.— When any number of process is lost or destroyed, a copy, authenticated as the Sheriff may require, may be substituted and held equivalent to the original, for the purposes of the action. Rule 17.

V. PROTESTATION

If the pursuer does not table the cause when enrolled on the first Court day after the expiry of the *induciæ*, the defender can produce the service copy writ and crave protestation for not insisting; “which the Sheriff may grant, and may modify the amount of protestation money payable to defender.” Rule 36.

The Sheriff has apparently discretion to allow the action to proceed.

It would appear as if rule 35 had been inserted in the wrong place. The word “then” in rule 36 refers grammatically to the second tabling provided for in rule 35, and not to the tabling on the expiry of the *induciæ* provided for by rule 34, which must have been the intention of the rules.

If within seven days after protestation (or forty-eight hours, if arrestments on the dependence have been used) the pursuer does not pay the expenses, the protestation can be extracted, upon which the instance falls. Rules 37, 38.

Protestation may be recalled before extract on payment of the protestation money, and on such other conditions as to the Sheriff may seem just. Rule 39.

An action which has not been tabled, and in which protestation has not been craved, drops from the roll; but within three months the Sheriff may direct it to be again enrolled for tabling, under conditions as to notice, re-service, or expenses. Rule 35.

The Act seems to contemplate that the only time at which the defender can obtain protestation is at the calling for tabling, but it has been held in the Edinburgh Sheriff Court not to be so limited. In *A. B. & Co. v. C. D.*, 1911, 1 S.L.T. 458, it was held that after

the three months the Sheriff could not direct enrolling and that the action thereupon fell.

VI. PRODUCTION OF DOCUMENTS BEFORE CLOSING RECORD

Along with their pleadings, or, at latest, before the closing of the record, if required by the opposite party or by the Sheriff, the parties must lodge any documents founded on in the pleadings, so far as within their custody or power. Rule 47.

Where such documents are not produced by either party, or where they are in the hands of third parties, the Sheriff may, on the motion of either party, grant commission and diligence for their recovery, and may on that account delay closing the record. Rule 48.

The Sheriff may order production of documents at any stage, and may allow a party, at any time before judgment, to produce any document which he has failed to produce timeously, on such conditions as to expenses and allowing further proof as he may think just. Rule 68.

Cameron v. Ferrier, 1913, 29 Sh. Ct. Rep. 125; *Crawford v. Elliott & Wainstein*, 1923, 39 Sh. Ct. Rep. 234.

As to result of failure to produce documents, see p. 92.

The power to enforce recovery of documents previous to the allowance of proof, if it existed in the Sheriff, was not generally exercised prior to 1907, so that rule 48 may be said to have sanctioned a new practice. It is thought that the recovery of documents prior to closing the record will be granted only for the limited purpose sanctioned by the practice of the Court of Session. The rule may be stated generally that, if the parties are unable properly to state their pleas without documents which are in hands of third parties, diligence for their recovery will be granted. On the other hand, if the documents are required as evidence of facts which can be set forth without the documents themselves, the proper time to recover them is after the record has been closed and a proof allowed.

Marshall & Sons v. Speirs & Son, 1882, 19 S.L.R. 696; *Christie v. Munro*, 1885, 23 S.L.R. 267; *Hope v. Hope's Trs.*, 1895, 3 S.L.T. 45; *Braby & Co. v. Story*, 1896, 3 S.L.T. 325; *Mathieson v. Scottish Trade Protection Society*, 1897, 5 S.L.T. 213; *Dalgleish's*

Trs. v. Mathieson's Trs., 1902, 10 S.L.T. 56; *Caledonian Railway Co. v. Crockett & Co.*, 1902, 10 S.L.T. 89; *Graeme Hunter v. Glasgow Iron, etc., Co. Ltd.*, 1908, 16 S.L.T. 15 (letter ordered to be produced after closing of record and before adjustment of issues); *Wright v. Valentine*, 1910, 26 Sh. Ct. Rep. 151; *Bradley v. Maguire*, 1920, 2 S.L.T. 417.

As to recovery of documents in view of proof, see p. 95.

The allowance of further proof under Rule 68 presents difficulties, as apparently the Sheriff-Substitute cannot competently allow additional proof. See p. 104.

VII. CLOSING RECORD

Upon defences being lodged, the Sheriff-Clerk enrolls the case for an ordinary Court day, occurring not less than four days thereafter, for adjustment. Rule 45 of 1913 Act.

The Sheriff on cause shown, or *ex proprio motu*, may order a revisal of the pleadings, or may order the pursuer to answer the defender's separate statement of facts. Rule 49.

When the pleadings have been adjusted, the Sheriff closes the record. Rule 52. This is done by formal interlocutor. All alterations or additions made on the record must be authenticated by the Sheriff's initials. Rule 53.

There is no requirement as to authentication by the agents, but it is thought the existing practice should still be followed, each agent initialing his alterations, *Kilcoyne v. Wilson*, 1907, S.C. 86; 44 S.L.R. 61; 14 S.L.T. 442.

In view of the latitude allowed in adjusting the pleadings, the necessity for revised papers being lodged is rare. Where the defender has made a separate statement of facts, it will be necessary for the Sheriff to allow the pursuer to lodge a separate answer thereto.

If a revisal or answers to the defender's statements are ordered, a time will be specified and the diet for closing continued.

The diet of adjustment is not to be adjourned more than once, unless upon special cause shown. Rule 45.

Previous to the diet for closing, the parties should mark on their respective papers, and communicate to each other, the alterations they intend to make. In practice alterations are sometimes made subsequent to the closing, but the practice is irregular, and such alterations on the record may be struck out and disregarded.

The object of the pursuer's amendments is to answer the state-

ments of the defender, and to re-state, amplify, or correct his former averments so as to meet the defender's answers.

The old rule, that statements made by either party and not denied or stated to be not known by the other party are to be held admitted, still holds; but its application in modern practice is hardly capable of definition, as much depends upon the nature of the facts in question. The principle of pleading has now been embodied in a rule by the Act of 1913, rule 44, which is as follows:—

“Every statement of fact made by one party shall be answered by the other party; and if a statement made by one party of a fact within the knowledge of the other party is not denied by that other party, the latter shall be held as admitting the fact so stated.”

Cf. *Gunn v. Melrose*, 1894, 2 S.L.T. 56; *Central Motor Engineering Co. v. Galbraith*, 1918, S.C. 755, 55 S.L.R. 702; 1918, 2 S.L.T. 177.

Practically no limit can be assigned to the alterations or additions a party may make on his pleadings at adjustment, save only so far as they do not go beyond the rules applicable to the competency of amendments. The initial writ proper—that is the writ apart from the condescendence and pleas—can only be altered by amendment and not by way of adjustment.

In framing the condescendence or in the adjustment of the record in addition to the observance of the rules of pleading, which require that sufficient facts be stated to maintain the crave for the decree which is asked, and that a foundation be laid for any particular line of evidence which it is intended to lead, the following points should be kept in mind. The facts necessary to sustain each plea should be distinctly and separately stated,—see *Macgrath v. Glasgow Coal Co. Ltd.*, 1909, S.C. 1250; 46 S.L.R. 890; 2 S.L.T. 92; *Keenan v. Glasgow Corporation*, 1923, S.C. 611; 60 S.L.R. 403; 1923 S.L.T. 392. While it may often be convenient and desirable to state in the condescendence *verbatim* the clause of a statute or of a deed, or the contents of a letter or other writing of importance, the old rule that so far as possible quotations should be avoided should still be regarded. The contents of documents can be made part of the averments by an express reference to them as being repeated *brevitatis causa*, *Western Bank v. Baird*, 1872, 11 M. 96. Argumentative matter should be strictly excluded. The condescendence should not contain any improper, scandalous, or unnecessarily objectionable statements. Such, if irrelevant to the issue, may be ordered to be struck out of the record, or at all events they will be excepted from the allowance of proof, *A. v. B.*, 1895, 22 R. 402; 32 S.L.R. 297; 2 S.L.T. 515; *H. v. P.*, 1905, 8 F. 232; 43 S.L.R. 258; *M. v. S.*, 1909, 1 S.L.T. 192; *Oliver v. Borland*, 1911, 2 S.L.T. 46; *C. v. M.*, 1923, S.C. 1; 1922 S.L.T. 634. This power is not expressly conferred on the sheriff

by the Act, but it appears to exist. As a rule it will probably be safer merely to exclude such statements from the allowance of proof. *M. v. S.*, 1909, 1 S.L.T. 192; *A. v. C.*, 1922, S.L.T. 34; *M'Isaac v. Leonard*, 1915, 31 Sh. Ct. Rep. 303 (powers of Sheriff to order deletion). Care should be taken to avoid statements of facts which are mutually destructive or inconsistent with each other, *M'Sourley v. Paisley Magistrates*, 1902, 10 S.L.T. 86; *Stanley, Ltd. v. Hanway*, 1911, 48 S.L.R. 757; 2 S.L.T. 2. Where alternative grounds of action are stated, the weaker alternative is the test of relevancy, *Hope v. Hope Trs.*, 1898, 1 F. (H.L.) 1; 35 S.L.R. 971; 6 S.L.T. 132 (per Lord Watson).

VIII. PROCEDURE AFTER CLOSING RECORD

Within six days of the closing of the record the pursuer must lodge in process a certified copy of the closed record. Rule 52, as amended by Act of 1913.

At the time of closing the record, the Sheriff determines the next step of procedure, which varies according to the nature of the pleas of parties. The future procedure is defined either in the interlocutor closing the record or in a separate interlocutor.

To all interlocutors other than those of a formal nature, the Sheriff has to append a note setting forth the grounds on which he proceeds. Rule 82.

The following are the ordinary possible courses which may be followed according to circumstances :—

1. If either party has preliminary pleas which require to be disposed of before the merits of the case can be dealt with, the order will be for debate. The case will thereafter be enrolled in the Debate Roll. The statutory direction is that if preliminary pleas have been stated the Sheriff shall first dispose of them, unless he thinks that, from their being connected with the merits or on any other ground, they should be reserved till a future stage of the cause. Rule 54.

Pleas in law were generally regarded as falling into the following classes :—

1. Dilatory, which were taken against the instance only, such as “ no title to sue ” or “ all parties not called.”

2. Preliminary, which were intended to exclude con-

sideration of the cause on its merits, such as “no jurisdiction” or “irrelevancy.”

3. Peremptory, which were pleas dealing with the merits.

In modern practice, pleas are classed either as “preliminary” or “on the merits.”

The ordinary preliminary pleas are the following :—

1. Declinature of the jurisdiction.
2. No jurisdiction.
3. *Forum non conveniens*.
4. *Lis alibi pendens*.
5. No title to sue.
6. All parties not called.
7. Incompetency of the action as laid.
8. Exclusion of action by statute or otherwise.
9. *Mora* and taciturnity.
10. *Res judicata*.

The following pleas may be either preliminary or on the merits :—

1. Incompetency.
2. Irrelevancy.

In modern practice pleas in law are often stated practically in the abbreviated forms above mentioned. Such method of stating pleas is, however, not to be commended, *Mitchell v. Aberdeen Insurance Committee*, 1918, S.C. 415; 55 S.L.R. 376; 1918, 1 S.L.T. 316. The plea ought to show the application of the abstract law to the concrete case in question, and where separate legal questions are raised there should be separate pleas distinctly enunciating each legal proposition. Several of the pleas stated in the terms above are capable of different interpretations.

The general rules as to disposal of pleas are as follows, viz. :—

1. All pleas, whether preliminary or on the merits, must be set forth at once, *Thorburn v. Dempster*, 1900, 2 F. 583; 37 S.L.R. 415; 7 S.L.T. 364.

2. Preliminary pleas should be disposed of before proof on the merits is gone into, *Docherty v. M'Alpine*, 1899, 2 F. 128; 37 S.L.R. 87; *Hunter v. Darngavil Coal Co.*, 1900, 3 F. 10; 38 S.L.R. 6; 8 S.L.T. 308; *Duncan v. Fife Coal Co.*, 1905, 7 F. 958; 42 S.L.R. 822; 13 S.L.T. 370; *Maclean v. Hassard*, 1903, 10 S.L.T. 593.

An allowance of proof reserving a plea of “no jurisdiction” is

not proper, unless in exceptional circumstances, *M'Leod v. Tancred, Arrol & Co.*, 1890, 17 R. 514; 27 S.L.R. 348.

As to lead in proof on plea of "no jurisdiction," see *Donald v. Baird*, 1907, 15 S.L.T. 427.

3. Proof may be allowed under reservation of these pleas. This is termed "proof before answer"; but this allowance of proof will only be granted where it is impracticable to decide on the preliminary pleas until the facts are ascertained, *Robertson v. Murphy*, 1867, 6 M. 114 (all questions of law and relevancy are reserved entire when proof allowed before answer); *Moncrieff v. Sievwright*, 1895, 33 S.L.R. 456; 3 S.L.T. 314.

A party by his conduct may be held to have departed from his preliminary pleas, *North British Railway Co. v. Carter*, 1870, 8 M. 998; 42 J. 411 (defender consented to warrant of sale being granted; plea that petition incompetent held as waived).

A plea of declinature should be stated *in initio litis*, *Duke of Athole v. Robertson*, 1869, 8 M. 299; 42 J. 135.

Preliminary pleas may competently be disposed of at the time of closing the record, when their nature is such as to admit of this despatch.

2. Upon the preliminary pleas being disposed of, or where there are none, and the parties are at issue as to the facts, a proof will be allowed and a diet fixed. Rule 59.

3. Certain cases may, within six days after the allowance of proof, be remitted to the Court of Session for proof or jury trial. Sec. 30.

4. Certain cases may, within six days after the allowance of proof, be ordered to be tried by jury in the Sheriff Court. Sec. 31.

5. If facts are not in dispute, and the question is one of law only, the case is sent to the Debate Roll, and is there disposed of.

If the parties renounce probation, a minute is signed to that effect on the interlocutor sheet. Rule 58. It is not necessary in order that the case be sent to the Debate Roll for debate on the merits that parties renounce probation, and it is rarely advisable to do so.

6. If there is good reason for not proceeding at once with the case to a decision (*c.g.* the dependence of a relative action), the action may be sisted either for a definite period or to await a specified event.

7. Parties may agree to a judicial remit or enter upon a judicial reference, and thereby remove the case from the arbitrament of the Sheriff.

8. One party may refer the cause to the oath of his opponent.

9. The parties may lodge a minute agreeing to the cause being disposed of (a) as a summary cause, or (b) in the manner provided by the Small Debt Acts. In the latter case, the Sheriff remits the action to his Small Debt Roll, and the provisions of the Small Debt Acts then become applicable to the cause. Rule 61.

10. Continuation of cause. There seems to be nothing in the statute making it incompetent to continue the cause without appointing procedure, but such a course would only be justified by very exceptional circumstances.

IX. DECREE BY DEFAULT

Decree as craved in favour of the pursuer, or of absolvitor in favour of the defender, or of dismissal of the action, as the case may be, with expenses, may be pronounced by reason of default in the following circumstances :—

(a) When any production or pleading has not been lodged, or when any order has not been implemented, within the time required by statute or ordered by the Sheriff.

It is thought that decree by default in respect of failure to lodge a production could only be warranted in very exceptional circumstances. The general rule is that failure to lodge a production results in the party founding on it losing the benefit of it, *Caledonian Railway Co. v. Orr*, 1855, 17 D. 812; 27 J. 418; *Strachan v. Stewart*, 1870, 9 M. 116; *Cameron v. Ferrier*, 1913, 29 Sh. Ct. Rep. 125.

(b) Where either party fails to appear by himself or his agent at any diet.

(c) Where either party fails to make payment of any Court dues or deposit. Rule 56. Act of Sederunt, 22nd February, 1922, sec. 2. Appendix, p. 423.

If all parties fail to appear, the Sheriff is to dismiss the action, unless sufficient reason appear to the contrary. Rule 56.

There must be an interlocutor fixing the diet before there can be default by non-appearance (*Macdonald & Co. v. Dewar*, 1903, 6 F. 189; 41 S.L.R. 123; 11 S.L.T. 466), unless in the case of a statutory diet.

The Sheriff may prorogate, on cause shown, the time for lodging any production or pleading, or implementing any order. Rule 56.

This power of prorogation is not restricted in its exercise to the currency of the original period, but may be exercised after its expiry, *Macnab v. Nelsons*, 1909, S.C. 1102; 46 S.L.R. 817; 2 S.L.T. 68.

Where decree by default has been pronounced, reponing can only be effected by appeal in the ordinary way to the Sheriff or the Court of Session. The matter will be dealt with entirely in the discretion of the Court. The Court of Session will not readily interfere with the discretion of the Sheriff.

Nicol v. Johnston, 1888, 26 S.L.R. 61.

The Court reponed in the following cases :—

(a) Neglect of agent to attend proof, *Morrison v. Smith*, 1876, 4 R. 9; 14 S.L.R. 17.

(b) Repeated failure of defender to attend proof in action of accounting, *Vickers & Son v. Nibloe*, 1877, 4 R. 729; 14 S.L.R. 473; *Robb v. Elgin*, 1877, 14 S.L.R. 473.

(c) Failure of agent to attend appeal, *King v. Gavan*, 1880, 17 S.L.R. 583.

(d) Failure of agent to attend debate owing to misunderstanding, *M'Carthy v. Emery*, 1897, 24 R. 610; 34 S.L.R. 455; 4 S.L.T. 332.

(e) Negotiations for settlement, *Bainbridge v. Bainbridge*, 1879, 6 R. 541; 16 S.L.R. 284.

(f) Failure to produce accounts, *Brown's Trs. v. Milne*, 1897, 24 R. 1139; 34 S.L.R. 863.

The Court refused to repon in the following cases :—

(a) Illness of pursuer's procurator and neglect of clerk, *M'Gibbon v. Thomson*, 1877, 4 R. 1085; 14 S.L.R. 648.

(b) Defender's agent elsewhere engaged, *Stevenson v. Hutchison*, 1895, 12 R. 923; 22 S.L.R. 613.

(c) Oversight of agent to attend closing through pressure of work, *Bain v. Lawson*, 1899, 1 F. 576; 36 S.L.R. 417.

(d) Oversight of agent to inquire for diet of debate in appeal, *Motherwell Comrs. v. Lanark C. C.*, 1901, 4 F. 151; 39 S.L.R. 116; 9 S.L.T. 254.

(e) Procedure on erroneous practice as to time of lodging papers, *Lord Brooke v. M. of Huntly*, 1911, 49 S.L.R. 71; 2 S.L.T. 382.

(f) Defender's agent on holiday, but case heard as an appeal on the merits, *Galpern v. Thompson*, 1917, S.C. 24; 54 S.L.R. 51; 1916, 2 S.L.T. 274.

CHAPTER X.

PROCEDURE CONNECTED WITH PROOF

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I. RECOVERY OF DOCUMENTS

WHEN documents are not in the hands of a party desiring to use them as evidence he may obtain a diligence against their custodier for their production.

The matter is dealt with in rule 62, which is as follows:—"At any time after a proof has been allowed, or an order made for jury trial, the Sheriff, upon the motion of either party, may grant commission and diligence for the recovery of such documents as the Sheriff shall deem relevant to the cause."

While this rule refers to such documents "as the Sheriff shall deem relevant to the cause," it is thought that this qualification is not intended to alter the accepted rules of practice in regard to the documents which can be recovered, or to require that any determination as to the relevancy of the documents as evidence is to be arrived at on the motion for diligence.

The general rules as to the recovery of documents may be summarised as follows:—

1. A party is entitled to recover all writings which are pertinent to the question at issue, and may possibly be used

to prove any averments which have been admitted to probation.

Blaikie v. Duncan, 1857, 19 D. 983; 29 J. 457; *D. of Hamilton's Trs. v. Woodside Coal Co.*, 1897, 24 R. 294; 34 S.L.R. 257; 4 S.L.T. 241.

Irrespective of any action being in dependence, a party having a legal right or interest in a document is entitled to raise an action for delivery or for exhibition as the case may be, *Whyte v. Kilmarnock County Council*, 1912, 2 S.L.T. 15.

2. The granting of diligence does not settle in any way the admissibility of the writings in evidence, but diligence will not be granted if it is shown that they cannot possibly be used as evidence.

Livingstone v. Dinwoodie, 1860, 22 D. 1333; 32 J. 568; *M'Alister v. Brown*, 1870, 8 S.L.R. 502; *Sleigh v. Glasgow, etc., Options, Ltd.*, 1903, 5 F. 332; 40 S.L.R. 313; 10 S.L.T. 558; *Macqueen v. Mackie & Co.*, 1920, S.C. 544; 57 S.L.R. 486; 1920, 2 S.L.T. 31.

3. Although diligence is granted, the haver of a document is entitled to object to produce it on the ground of confidentiality. All such questions should be decided by the commissioner, there being appeal from him to the Sheriff.

Stewart, Govan & Co. v. Birrell, 1897, 5 S.L.T. 174. Refusal to comply with the ruling of the commissioner is reported to the Court, and is dealt with as contempt of court, *National Exchange Co. v. Drew & Dick*, 1858, 20 D. 837; 1860, 22 D. (H.L.) 9.

In order to obtain a diligence a specification or descriptive list of the documents required is lodged. After hearing parties, the Sheriff either grants or refuses diligence for the recovery of the documents set forth in the specification in whole or in part. If diligence is granted, a commissioner is appointed to receive the exhibits. A report of the proceedings, with the documents recovered, is lodged in the process.

The commissioner alone is entitled to examine books, *Cassils & Co. v. Absalon*, 1907, 15 S.L.T. 48, but in special circumstances the assistance of an accountant has been authorised, *Whitley, Ltd. v. Dobson, Molle & Co.*, 1902, 10 S.L.T. 71; *Cassils v. Absalon*, *supra*; *Johannesburg Council v. Stewart & Co.*, 1911, 1 S.L.T. 359.

The procedure before the commissioner is practically the same as in a commission to take evidence. See *infra*, p. 98.

The only object of the examination of havers is to recover documents, or to ascertain where they are, or if they are not extant, what has become of them. Havers may not be examined as witnesses.

The recovery of documents by diligence does not make them evidence. The report of the commission can be referred to as evidence of the means taken to recover writings and the result of the search, *Falconer v. Stephen*, 1849, 11 D. 1338; *Somervell v. Somervell*, 1900, 9 S.L.T. 84.

The expense of a diligence and commission forms part of the expense of process, and will as a rule be allowed, even although no documents have been recovered, *M'Leod's Trs. v. Leslie and Others*. 1868, 5 S.L.R. 687; but not if a party recovers documents and does not use them, *Mackie & Stark v. Cruickshank*, 1896, 4 S.L.T. 84.

There are special provisions in regard to bankers' books. These cannot be recovered under diligence, but can be made available as evidence by the method provided by the Bankers' Books Evidence Act, 1879 (42 Vict. c. 11). Under this Act a bank official cannot, in any action to which the bank is not a party, be compelled to produce books or to appear as a witness to prove the accounts therein unless by special order of the judge. Sec. 6.

A party may, after giving three days' notice to the bank, obtain an order to inspect and take copies of entries in the books. Sec. 7.

A copy of any entry in a banker's books certified as directed by the Act is to be received as *primâ facie* evidence of the entry, and of the matters, transactions, and accounts therein recorded. Secs. 3, 4, and 5.

In practice, the provisions of the Bankers' Books Evidence Act rarely require to be invoked. Entries in bankers' books are frequently included in a specification, and on diligence being granted the bank supplies a copy of the entries, which is accepted by the parties.

II. OBTAINING EVIDENCE ON COMMISSION

A commission may be granted to take evidence in the following cases :—

1. At any Stage after Action raised.—Rule 63 makes the general provision “Evidence in danger of being lost may be taken to lie *in retentis*.”

The application may be made at any time after, but not before, service of the action.

Hansen v. Donaldson, 1873, 1 R. 237.

The grounds of application are ordinarily the extreme old age or the dangerous illness of a witness, or that a witness is necessarily leaving Scotland. It is not clear whether any other cases would be held to fall under the rule, but the matter is apparently to some extent in the discretion of the Sheriff.

2. After an Allowance of Proof.—(a) Where witnesses are resident beyond the jurisdiction of the Court.

There is no power in the Sheriff Court to enforce the attendance, either before a Sheriff or a commissioner within Scotland, of a witness who resides furth of Scotland. If the witness is in the United Kingdom the provisions of the Evidence on Commission Act, 1843, and the Evidence on Commission Act, 1859, may be invoked, or if abroad, the C.A.S., L, ii., as to Letters of Request. See Appendix, p. 359.

Lawson v. Donaldson, 1893, 10 Sh. Ct. Rep. 110.

(b) Where witnesses, though resident within the jurisdiction, reside at some place remote from the seat of the Court.

(c) Where witnesses are unable, by reason of illness, age, or infirmity, to attend the diet of proof. Rule 70.

The rule is that a witness over seventy years of age cannot be compelled to attend the diet of proof, but may have his evidence taken on commission, *Wilson v. Young*, 1896, 4 S.L.T. 73.

In the case of illness or infirmity, a medical certificate, which should state generally the nature of the illness, has to be produced. Where the certificate was challenged, a remit was made to another medical man, *Lunn v. Watt*, 1911, 2 S.L.T. 479. Prior inquiry will

not be made as to the mental fitness of the person to give evidence, *M'Intyre v. M'Intyre*, 1920, 1 S.L.T. 207.

The evidence of a party to the cause may competently be taken on commission; but this will only be allowed in special circumstances, *Sampson & Co. v. Hough*, 1886, 13 R. 1154; 23 S.L.R. 828; *Robertson v. Robertson*, 1897, 4 S.L.T. 358; *Anderson v. Morrison*, 1905, 7 F. 561; 42 S.L.R. 428; 12 S.L.T. 784.

The case of a witness who is about to leave the country is not expressly included in the foregoing rule; but as such would fall under rule 63 mentioned below, the omission is perhaps unimportant.

Evidence, whether to lie *in retentis* or taken after proof has been allowed, may be taken by the Sheriff or by a commissioner. Rules 63 and 70. The Act gives no directions as to the appointment of a commissioner, and the previous existing practice will probably be adhered to. Under this the commissioner may be a Sheriff, Sheriff-Clerk, practitioner of three years' standing, or a Justice of the Peace or other Magistrate.

The evidence is taken in the same way as at a proof before the Sheriff. Formerly the report of the evidence had to be signed by the witness, the commissioner, and his clerk; and it is thought that this should still be done, notwithstanding the general terms of rule 65, unless the evidence is recorded in shorthand, in which case it is thought that, while the evidence is authenticated by the shorthand writer, the commissioner and clerk should still sign the report.

The expense of a commission, where necessary, forms part of the expense of process, *Graham v. Borthwick*, 1875, 2 R. 812; 12 S.L.R. 114 (expense not allowed where witness brought an unnecessarily long distance); *Parker v. N.B. Railway Co.*, 1900, 8 S.L.T. 18; *Weir & Co. v. Rogers & Co.*, 1896, 14 Sh. Ct. Rep. 253; *Burn Murdoch's Trs. v. Thomson's Trs.*, 1908, 15 S.L.T. 721 (expenses allowed where case abandoned); *Speirs v. Caledonian Railway Co.*, 1921, S.C. 889; 58 S.L.R. 573; 1921, 2 S.L.T. 123.

The party moving for a commission is liable for the expense in the first instance. Rule 67.

Form of application to take evidence on commission is given on page 486. After appearance has been entered, a motion will in general be sufficient.

It is thought that the witnesses should be named in the interlocutor as in Court of Session practice, *Crawford & Law v. Allan Steamship Co. Ltd.*, 1908, 16 S.L.T. 434; *Western Ranches, Ltd. v. Nelson's Trs.*, 1898, 25 R. 527; 35 S.L.R. 448.

There is no statutory rule in regard to the use of the report of the evidence taken on commission in a proof, but Rule 138 makes provision as to the use of the evidence so taken, at a trial before a jury. If the witness is available at the time of the trial, either party may have him examined at the diet, in which case his evidence taken on commission is entirely superseded; if he is not available, the evidence taken on commission will be admitted as part of the proof. It should, however, be expressly noted in the notes of evidence that the party puts in the report of the commission as part of his case.

Cameron v. Woolfson, 1918, S.C. 190; 55 S.L.R. 233; 1918, 1 S.L.T. 128.

If the witnesses who have been examined on commission are subsequently put in the witness-box the report cannot be referred to in order to show contradictions in their evidence, *Forrests v. Low's Trs.*, 1907, S.C. 1240; 45 S.L.R. 925; 15 S.L.T. 330. See also *Parker, supra*, p. 99.

III. CITATION OF WITNESSES

Witnesses and havers may be cited either personally by an officer, or by registered letter by an officer or law agent, in the same way as a defender to a cause. The warrant for citation is a copy of the interlocutor allowing the proof or fixing the diet of proof, certified as correct by the Sheriff-Clerk. Rule 71.

It is thought that the interlocutor should expressly bear that the diet is for proof or trial, *Grant v. Grant*, 1908, 24 Sh. Ct. Rep. 118.

If the witness is in another county from that in which the warrant is issued, it does not require to be first endorsed by the Sheriff-Clerk of the county where it is to be executed. Rule 10.

The citation and execution are in the Forms F and G annexed to the Act, and are given on p. 332.

A witness, duly cited on an *induciæ* of at least forty-eight hours before the diet, who fails to attend, after tender of his travelling expenses if demanded, is liable in a penalty not exceeding forty shillings, unless a reasonable excuse

is given and sustained. The party citing obtains decree for the penalty. Rule 71.

Second diligence may be granted against a witness who fails to attend. For the expense of this he is liable, and he may be imprisoned till he find caution to appear. Rule 73.

In the case of citation by post, the forty-eight hours will run from twenty-four hours after the posting. Citation Act, 1882, sec. 4.

If the letter is tendered at the proper address and refused, the Court may grant a diligence without waiting for the non-attendance of the witness at the diet. Letters of diligence are not necessary in such a case, *Steedman v. Steedman*, 1886, 23 S.L.R. 856.

If a witness is required to produce documents which are in his possession, they should be specified in the citation.

If a party is in Court he may be examined as a witness although he has not been properly cited, *Watson v. Livingstone*, 1902, 5 F. 171; 40 S.L.R. 267; 10 S.L.T. 421.

The agent who cites witnesses is personally liable for their fees (rule 72), *Fraser v. Stronach*, 1885, 23 S.L.R. 76. The same rule applies to havers, *Bayley v. Middleton*, 1909, 1 S.L.T. 493.

IV. INSPECTION OF WORKS, MACHINERY, ETC.

In cases where evidence as to the condition of buildings, works, machinery, etc., is material, the party who has the control of these is bound to allow them to be inspected on behalf of the other side, and to afford reasonable facilities; and if he refuses, he may be ordered to do so by the Court.

Routledge v. Somerville, 1866, 4 M. 830; *Bell v. Hamilton's Trs.*, 1889, 16 R. 1001; 26 S.L.R. 679 (value of subjects); *Stevenson v. Gray & Sons*, 1902, 9 S.L.T. 489 (inspection of bottles in defender's premises said to be sold in breach of rights); *Christie v. Munro*, 1885, 23 S.L.R. 267 (picture ordered to be exhibited to enable pursuer to describe it before record closed).

The names of the parties who are to inspect must be furnished to the other side, *Clippens Oil Co. v. Edinburgh, etc., Water Trustees*, 1904, 12 S.L.T. 40.

Application to inspect is, as a rule, competent only after allowance of proof, *Irvine v. William Dixon, Ltd.*, 1890, 6 Sh. Ct. Rep. 192; *Gallagher v. Linlithgow Oil Co.*, 1891, 8 Sh. Ct. Rep. 13.

The Court will not enforce the granting of facilities for the precognition of witnesses, *M'Phee v. Glasgow Corporation*, 1910, 1 S.L.T. 380; *Henderson v. Patrick Thomson, Ltd.*, 1911, S.C. 246; 48 S.L.R. 200; 1910, 2 S.L.T. 443. See also *Barrie v. Caledonian Railway Co.*, 1902, 5 F. 30; 40 S.L.R. 50; 10 S.L.T. 333.

In actions for damages for personal injury, the pursuer is bound to submit himself to examination by medical men on behalf of, and selected by, the defender.

Junner v. N.B. Railway Co., 1877, 4 R. 686; 14 S.L.R. 438; *Smyth v. Gow*, 1895, 2 S.L.T. 473 (ordered before closing of record). See also *A. B. or D. v. C. D.*, 1908, 15 S.L.T. 911; and *X. v. Y.*, 1922, S.L.T. 158.

V. PROCEDURE AT PROOF

The evidence may be taken down either by the Sheriff or by a clerk or shorthand writer, to whom the oath *de fidei administratione* is administered. The Sheriff may dictate the evidence which is to be recorded, and also a note of documents produced and admissions made. The evidence may be recorded either in narrative form or in the form of question and answer, as the Sheriff directs. Rule 65. The extended notes of the clerk or shorthand writer, certified by him as correct, are the record of the oral evidence. Rule 65.

If the correctness of the notes is questioned, it is competent for the Sheriff to satisfy himself regarding the same by examination of witnesses or otherwise, and, if necessary, to amend the record of evidence. Evidence Further Amendment (Scotland) Act, 1874, sec. 4 (2), and rule 66.

Yates v. Robertson, 1891, 18 R. 1206; 28 S.L.R. 911 (shorthand notes destroyed; Sheriff may order evidence to be led of new).

Each witness is sworn by the Sheriff, unless he desires to take an affirmation instead. Oaths Act, 1888 (51 & 52 Vict. c. 46, sec. 1). After the examination of each witness, he is cross-examined by the agent for the other party upon the evidence he has already given, and may also be examined upon new matter not elicited in his examination-in-

chief. The examining party then re-examines the witness upon the cross-examination. Thereafter further examination is not allowed, except by leave of the Sheriff. A witness, after leaving the box, may be recalled for further examination, in the discretion of the Sheriff.

There are no statutory enactments expressly governing the procedure at a proof which follows the rules laid down in the Codifying Act of Sederunt, F, ii., 2 and 4, for the conduct of jury trials.

As to recalling a witness, see *Robertson v. Stewart*, 1874, 1 R. 532; 11 S.L.R. 427; *Hoey v. Hoey*, 1884, 11 R. 578; 21 S.L.R. 407. But see *Begg v. Begg*, 1887, 14 R. 497; 24 S.L.R. 367.

The practice in filiation cases of the pursuer calling the defender as a witness, adversely commented on in *M'Arthur v. M'Queen*, 1901, 3 F. 1010; 38 S.L.R. 732; 9 S.L.T. 114, but sanctioned in *Darroch v. Kerr*, 1901, 4 F. 396; 39 S.L.R. 270; 9 S.L.T. 359, has now been held to be defensible only in exceptional circumstances, *M'Whirter v. Lynch*, 1909, S.C. 112; 46 S.L.R. 83; 16 S.L.T. 526.

As to failure of defender to give evidence, see *Faddes v. M'Neish*, 1923, S.C. 443; 60 S.L.R. 303; 1923 S.L.T. 237. See also *Nelson v. Easdale Slate Quarries Co. Ltd.*, 1910, 1 S.L.T. 21.

The shorthand writer's fees are payable by the parties equally, and the agents are personally liable therefor. The Sheriff may order payment. Rule 67.

They will apparently be liable though the shorthand notes are not required, *Marshall v. Shearer*, 1903, 11 S.L.T. 71.

The proof is to be taken continuously so far as possible, but may be adjourned from time to time. Rule 69.

In maritime causes the Sheriff may, on the application of a party, obtain the assistance of one or more nautical assessors at a proof or hearing, under the provisions of the Nautical Assessors (Scotland) Act, 1894, and C.A.S., L, i.

As to the functions of nautical assessors, see "*Nerano*" v. "*Dromedary*," 1895, 22 R. 237; 32 S.L.R. 196; *Cambo Shipping Co. v. Dampskibsselskabet Carl*, 1920, S.C. 26; 57 S.L.R. 59; 1919, 2 S.L.T. 224; *Laird Line Co. Ltd. v. United States Shipping Board, etc.*, 1923, S.C. 316; 60 S.L.R. 265; 1923 S.L.T. 208; *Pacific Steam Navigation Co. v. Anglo-Newfoundland Development Co.*, 1923, S.C. 526; 60 S.L.R. 333; 1923 S.L.T. 342.

VI. ADDITIONAL PROOF

There are no statutory provisions in regard to the allowance of further or additional proof by the Sheriff-Substitute. This can only be regarded as an oversight, as previous to the Act of 1907, the Act of Sederunt of 1839 (sec. 83) empowered the Sheriff to allow additional proof, although only "upon very weighty reasons shown." This Act of Sederunt was superseded by the passing of the Statute of 1907, and by the amending Act of 1913 (sec. 27 of the 1907 Act) an express power was conferred on the Sheriff when an action was before him on appeal "to allow further proof." The view generally held seems to be that the Sheriff-Substitute has no power to allow additional proof. The result is unfavourable to the proper disposal of the case, seeing that whatever grounds there may be for admitting further evidence the admission cannot be considered until the judge who is trying the case has pronounced his decision on a proof which may be incomplete. The advisable course would seem to be to lodge, as soon as the necessity arises, a minute stating the grounds on which it is said that the further evidence should be allowed, the names of the witnesses and the evidence which they are expected to give, and to crave leave to amend if necessary.

See *Cook v. Crane*, 1922, S.C. 631; 59 S.L.R. 466; 1922 S.L.T. 397; and *Jackson v. M'Kay*, 1923, S.C. 286; 60 S.L.R. 190; 1923 S.L.T. 151.

Hogan v. Cunningham, 1916, 32 Sh. Ct. Rep. 67.

As evidence in support of the averments on record is alone admissible, the necessity for allowing additional proof is rare. But see *Mackie v. Pratt*, 1870, 42 J. 273; *Scott v. Dawson*, 1884, 11 R. 518; 21 S.L.R. 351 (proof allowed although no averment on record); *Johnston v. Johnston*, 1903, 5 F. 336; 40 S.L.R. 499; 10 S.L.T. 740 (facts coming to knowledge of party since proof); *Mitchell v. Sellar*, 1915, S.C. 360; 52 S.L.R. 300; 1915, 1 S.L.T. 128; *Gairdner v. Macarthur*, 1915, S.C. 589; 52 S.L.R. 427; 1915, 1 S.L.T. 277; *Balfour-Kinnear v. Balfour-Kinnear*, 1919, S.C. 391; 56 S.L.R. 282; 1919, 1 S.L.T. 218.

Plans discovered after proof had been closed were allowed to be produced in *Reid v. Haldane's Trs.*, 1891, 18 R. 744; 28 S.L.R. 511.

See also *Coul v. Ayrshire C. C.*, 1909, S.C. 422; 46 S.L.R. 338; 1 S.L.T. 144; *A. B. v. C. D.*, 1911, 49 S.L.R. 17; 2 S.L.T. 347 (absconding witness); *Universal Stock Exchange Co. v. Howat*, 1891, 19 R. 128; 29 S.L.R. 119 (principal deed allowed to be lodged to take the place of copy).

Additional proof was refused in the following cases:—

(a) Where application was made after the case had been decided by the Sheriff-Substitute, and the witness should have been called at the proof, *Mabon v. Cairns*, 1875, 3 R. 47; 13 S.L.R. 23; *Stott v. Allan*, 1893, 20 R. 804; 30 S.L.R. 728; 1 S.L.T. 89. See also *Miller v. N.B. Locomotive Co. Ltd.*, 1909, S.C. 698; 46 S.L.R. 755; 1 S.L.T. 519 (case under Workmen's Compensation Act, 1906).

(b) Where a witness was alleged to have been suborned to give false evidence, *Brown v. Gordon*, 1870, 8 M. 432; 42 J. 207.

(c) Where there was oversight to prove one branch of case, *Cruickshank & Co. v. Caledonian Railway Co.*, 1876, 3 R. 484; *Glengarnock Iron Co. v. Cooper & Co.*, 1895, 22 R. 672; 32 S.L.R. 546; 3 S.L.T. 36.

(d) Where joint minute of admission had been lodged and probation renounced, *Carswell & Son v. Finlay*, 1887, 24 S.L.R. 643.

Proof in Replication is a term now rarely met with. It was applied to a proof in reply to the conjunct probation of the opposite party. It was seldom allowed, and only on special cause, such as that a particular line of evidence led was one which the applicant could not have anticipated. A continuation of the proof or the allowance of additional proof is the form now adopted in special circumstances.

Gairdner v. Young, 1874, 2 R. 173; 12 S.L.R. 140; *Rankine v. Roberts*, 1873, 1 R. 225.

VII. LEADING OF EVIDENCE

The method of leading evidence is regulated by the terms of the interlocutor allowing the proof. The following are the usual forms of the allowance of proof:—

1. "Proof at large" or "Proof prout de jure," or, generally, "Proof" without qualifying Terms.—This allowance of proof is applicable to the ordinary case of inquiry, and admits all competent evidence, whether oral or documentary, of all disputed facts set forth in the record.

It may take one or other of the following forms :—

(a) If the case rests on the pursuer's averments and the defender's denials, the form will be, " Allows the pursuer a proof of his averments and the defender a conjunct probation." The effect of this allowance is that the defender is not entitled to lead evidence upon a separate ground of defence even though it might be set out in his defences.

Scott & Co. v. Forrest & Turnbull, 1897, 24 R. 877; 34 S.L.R. 655; 5 S.L.T. 33.

(b) If the pursuer's case is admitted, but the defender states a separate defence, the order will be, " Allows the defender a proof and the pursuer a conjunct probation."

(c) If both parties have substantive averments, the order will be " Allows the parties a proof of their respective averments and the pursuer a conjunct probation," or simply " Allows the parties a proof of their averments." Under such an order each party has to lead the evidence in support of his own case, and in answer to his opponent's case, in so far as he can anticipate it, at the same time.

Richardson v. Fleming, 1867, 5 M. 586; *Gairdner v. Young*, 1874, 2 R. 173; 12 S.L.R. 140; *Rankine v. Roberts*, 1873, 1 R. 225.

This allowance of proof admits evidence of all the averments on record, even though they may be irrelevant.

Hamilton's Trs. v. Woodside Coal Co., 1897, 24 R. 294; 34 S.L.R. 257; 4 S.L.T. 241; *Barr v. Bain*, 1896, 23 R. 1090; 33 S.L.R. 780; 4 S.L.T. 95; *Kerr's Trs. v. Ker*, 1883, 11 R. 108; 21 S.L.R. 89.

2. Proof by Writ or Oath.— This allowance is pronounced where it is held that parole evidence is incompetent to prove the averments. Where this is so the allowance of proof should be expressly limited, " Allows the pursuer a proof by the writ or oath of the defender."

3. Proof habili modo.— This phrase has in reality no significance beyond what is implied in any allowance of proof. Where it is used it indicates that while a proof has been allowed, without any express restriction, it is to be

understood that there may be certain facts which can possibly only competently be proved by writ or oath, and it reserves the actual decision as to the question of competency of the evidence until it arises at the proof.

Paterson v. Paterson, 1897, 25 R. 144; 35 S.L.R. 150; 5 S.L.T. 209; *Hallet v. Ryrie*, 1907, 15 S.L.T. 367; *Watt v. Bridgeton Working Men's Club*, 1901, 9 S.L.T. 5; *Smith's Trs. v. Smith*, 1911, S.C. 653; 48 S.L.R. 578; 1 S.L.T. 299.

4. Proof before Answer.—This term was and still is occasionally employed where it is intended to reserve decision on the competency of parole proof till after the evidence has been taken. The ordinary meaning of the term in recent practice is that the proof is allowed before answer as to the relevancy. If the action is clearly irrelevant on the record, a proof should not be allowed; but if it is thought the facts should be ascertained before deciding on the relevancy, the form of allowance of proof is “before answer.”

Robertson v. Murphy, 1867, 6 M. 114; *Moncrieff v. Sievright*, 1896, 33 S.L.R. 456; 3 S.L.T. 314.

VIII. APPEALS AS TO THE ADMISSIBILITY OF EVIDENCE TAKEN DURING THE COURSE OF THE PROOF

Appeals to the Sheriff, in the course of a proof before the Sheriff-Substitute, are competent in two sets of circumstances :—

1. Any objection repelled or sustained, and any answer thereto, if desired by the objector, is to be shortly noted on the notes of evidence. The evidence objected to may be taken on separate paper. Rule 74.

The Sheriff-Substitute's ruling on objections may, with his leave, be appealed to the Sheriff on the proof being closed, or within seven days thereafter if judgment has not been pronounced in the interval. Rule 75.

Such appeal has to be disposed of with the least possible delay, and with or without a hearing. Rule 75.

The Sheriff may delete the evidence from the notes of evidence if he thinks it should not have been allowed; or if he thinks it has been improperly rejected he may appoint it to be taken before the case is advised on the merits. Rule 75.

Failure to take appeal against disallowance of questions may militate against a later motion for additional proof, *Jackson v. M'Kay*, 1923, S.C. 286; 60 S.L.R. 190; 1923 S.L.T. 151.

2. If any person, whether a party or other person, (a) pleads confidentiality as to documentary or oral evidence, or (b) objects to produce documents, on pleas of alleged hypothec or otherwise, the Sheriff-Substitute minutes his decision, and appeal can be taken with leave of the Sheriff-Substitute in open Court.

The Sheriff is to dispose of the appeal with or without hearing, and with the least possible delay. Rule 76.

The rule provides that "such incidental appeal" is not to remove the case from the Sheriff-Substitute, who may proceed as regards points not necessarily depending on the ruling appealed against. Rule 77.

This may possibly apply to appeals either under rule 75 or rule 76.

IX. JUDGMENT

At the conclusion of the proof, the Sheriff may pronounce an interlocutor declaring the proof closed. Frequently this is not done, but it is noted on the record of evidence that the parties respectively closed their proof; and immediately thereafter, or at an adjourned diet, parties or their agents are heard upon the evidence, and judgment is directed to be pronounced with the least possible delay. Rule 78.

To all interlocutors, except such as are of a formal nature, the Sheriff must append a note setting forth the grounds on which he has proceeded. In the final judgment on the merits he has to set forth his findings in fact and in law separately. Rule 82.

The following cases were remitted back to the Sheriff to have requirements formerly in force as to the contents of interlocutors complied with:—*Melrose v. Spalding*, 1868, 6 M. 952; 40 J. 545; *Glasgow Gas-Light Co. v. Glasgow Working Men's Total Abstinence Society*, 1866, 4 M. 1041; *Mackay v. Mackenzie*, 1894, 21 R. 894; 31 S.L.R. 746; 2 S.L.T. 69. See as to effect of findings in appeal to House of Lords, *Mackay v. Dick & Stevenson*, 1881, 8 R. (H.L.) 37; 18 S.L.R. 387; *Shepherd v. Henderson*, 1881, 9 R. (H.L.) 1; 19 S.L.R. 577; *Caird v. Sime*, 1887, 14 R. (H.L.) 37; 23 S.L.R. 19; *Little v. Stevenson*, 1896, 23 R. (H.L.) 12; 33 S.L.R. 514; 3 S.L.T. 328 (findings though not material to judgment should be stated).

It is not sufficient that the findings are in the note, *M'Caffer v. Allan*, 1896, 33 S.L.R. 601; 4 S.L.T. 27.

Any clerical or incidental errors in a judgment can be corrected at any time before extract or transmission on appeal. Rule 84.

All alterations should be authenticated by the Sheriff, *Clark & Macdonald v. Bain*, 1895, 23 R. 102; 33 S.L.R. 86; 3 S.L.T. 159 (correction in interlocutor not authenticated sustained); *Marshall v. Caledonian Railway Co.*, 1899, 2 F. 6; 37 S.L.R. 7; 7 S.L.T. 162 (interest added); *Moncrieff v. Perth Comrs.*, 1886, 13 R. 921; *Ferguson Bequest Fund v. Educational Comrs.*, 1887, 14 R. 717; 24 S.L.R. 515; *Rottenburg v. Duncan and Others*, 1896, 24 R. 35; 34 S.L.R. 35; 4 S.L.T. 125 (cancellation of interlocutor pronounced in error).

Alterations that may be necessary on an interlocutor ought to be made without delay, *Kennedys v. Clyde Shipping Co.*, 1908, S.C. 895; 45 S.L.R. 736; 16 S.L.T. 121; *Lauder v. National Bank of Scotland*, 1918, 1 S.L.T. 43; *Burke v. Harvey*, 1916, 2 S.L.T. 315.

When an interlocutor bears to be of consent and the party denies having given consent, the Court may allow inquiry, *Whyte v. Whyte*, 1895, 23 R. 320; 33 S.L.R. 227.

The final judgment must dispose of the whole case, either by (a) granting decree, in terms of the crave, in the pursuer's favour; or (b) granting decree of absolvitor in favour of the defender; or (c) granting decree in favour of defender for a counter claim; or (d) dismissing the action; or one or more parts of the case may be dealt with in any of these ways.

In all cases the question of expenses should be determined.

Caledonian Railway Co. v. Cochrane's Trs., 1897, 24 R. 855; 34 S.L.R. 643; 5 S.L.T. 21 (suspension granted where Sheriff refused to make findings as to expenses). See p. 227 as to final interlocutor.

The Sheriff may pronounce or sign any judgment or interlocutor when furth of his sherifffdom, but the date of every interlocutor is deemed to be the date on which it is entered in the books of the Court. Rule 83.

Decrees, warrants, or orders for payment of consigned money, or for transfer of property, heritable or moveable, in any process for the distribution of the estate of any person deceased, are not to be presented for signature of the Sheriff until a certificate of payment of income-tax, estate duty, legacy duty, succession duty, and any other duty payable to the Commissioners of Inland Revenue has been lodged. Codifying Act of Sederunt, L, iii. See Appendix, p. 361.

CHAPTER XI.

PROCEDURE CONNECTED WITH JURY TRIAL IN THE SHERIFF COURT

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I. COMPETENCY OF JURY TRIAL IN THE SHERIFF COURT

JURY trial in the Sheriff Court is competent only in an action of damages, in which the amount sued for exceeds £50, raised by an employee against his employer under the Employers' Liability Act, 1880, or at common law, or alternatively under that Act or at common law, in respect of injury caused by accident arising out of and in the course of his employment. Act of 1907, sec. 31, as amended by Act of 1913.

This method of procedure was introduced into the Sheriff Court by the Act of 1907, and is regulated by secs. 31 and 33 of the Act, and rules 133 to 135, 137 to 139, 141 to 143, and 145 to 150. Section 32 and rules 136, 140, and 144 of the Act of 1907, have been repealed by the Act of 1913, and sec. 6 of the latter Act is evidently intended to be read as the substituted sec. 32.

As to special features of procedure in claims by workmen against employers, see p. 48.

The word "employee" has been interpreted by the Act of 1913, sec. 3, by adding to the interpretation clause 3 of the Act 1907, "(q) 'Employee' includes the legal personal representative of an employee, and any person who by the law of Scotland may be entitled to solatium in respect of the death of an employee." This definition removes the grounds of decision in the cases of *Cook v. Bonnybridge Silica Co. Ltd.*, 1911, S.C. 177; 48 S.L.R. 243; 1910, 2 S.L.T. 227, 399; *Brown v. Glenboig Union Fireclay Co. Ltd.*, 1911, S.C. 179; 48 S.L.R. 245; 1 S.L.T. 36; *Lawrie v. Banknock Coal Co.*

Ltd., 1911, S.C. 817; 48 S.L.R. 629; 1 S.L.T. 353; 1912 S.C. (H.L.) 20; 49 S.L.R. 98; 1911, 2 S.L.T. 475.

II. PROCEDURE PREVIOUS TO TRIAL

1. Motion for Trial.—The procedure up to the allowance of proof is the same as in an ordinary action. Either party, as soon as proof has been allowed, or within six days thereafter, may require that the cause be tried by a jury. Sec. 31.

In such case, the Sheriff is directed to appoint the action to be tried before a jury of seven persons. Sec. 31.

If the Sheriff does not hold a Court within the six days, the application would require to be made by minute or written motion.

The allowance of proof may be reviewed by the Sheriff (see p. 215), and by the Court of Session with leave of the Sheriff (see p. 227). Proof being allowed, either party has a statutory right to have an order for trial by a jury, under sec. 31, provided the cause falls within the limits of that section. Review of the interlocutor appointing or refusing jury trial might be obtained by appealing against the allowance of proof. Otherwise there would be appeal with leave only.

2. Time of Trial.—Where a jury trial has been ordered the Sheriff issues an interlocutor fixing a time and place for the trial, being not sooner than fourteen days from the date of his interlocutor. Act of 1913, sec. 6.

3. Lodging Productions.—Documents or productions intended to be put in evidence or referred to at the trial are to be lodged four days before the trial. The Sheriff may allow productions to be put in at the trial if satisfied that they could not reasonably have been lodged earlier, and that reasonable notice has been given to the other parties of the intention to produce them at the trial. Rule 142.

The analogous rule in Court of Session practice (Codifying Act of Sederunt, B, ii., 1) deals with documents "which are intended to be used or put in evidence" at the trial. This rule is held not to apply to documents merely used in cross-examination, *Paterson & Son v. Kit Coffee Co. Ltd.*, 1908, 16 S.L.T. 180. Cf. *Livingston v.*

Dinwoodie, 1860; 22 D. 1333; 32 J. 568. It is thought that rule 142 should be construed as not to exclude such a use of documents at a trial.

4. Citing Jurors.—The jury consists of seven persons (Act, sec. 31), two being special and five common jurors, chosen from a panel of five special and ten common jurors. Rule 133.

The qualifications of jurors are as follows :—

(1) Of Common Jurors.

(a) Ownership in his or her own right, in liferent or fee, of heritable property within the county of the yearly value of £5; or (b) ownership of personal property of the value of £200 (6 Geo. IV. c. 22, sec. 1; 32 & 33 Vict. c. 36; 34 & 35 Vict. c. 103).

(2) Of Special Jurors.

(a) Payment of cess in the county upon £100 of valued rent (that is, land tax, now only partially extant), or (b) payment of Crown taxes on a house of the rent of £30 a year, or (c) infeftment in heritable property yielding £100 per annum, or (d) residence in the sheriffdom and possessing personal property worth £1000 (55 Geo. III. c. 42, sec. 24; 7 Geo. IV. c. 8, sec. 1).

Exemptions from service as Juror.

Certain persons though possessing the above qualifications are exempt. These are (a) peers; (b) judges, sheriffs, and magistrates of royal burghs; (c) ministers of religion (under the Act, unless E.C. ministers, they must have taken the oaths, but now all ministers are considered exempt); (d) parochial schoolmasters; (e) lawyers and officers of the law; (f) clerks and officials of law courts; (g) university professors; (h) physicians and surgeons; (i) army and navy officers, custom, excise, and income-tax officers, and generally Inland Revenue officials; (j) lighthouse keepers; (k) dentists (Dentists Act, 1878); (l) officers and men of the Territorial Forces (Territorial and Reserve Forces Act, 1907, sec. 23 (4)); (m) persons under twenty-one years of age; and (n) persons over sixty years of age (6 Geo. IV. c. 22, sec. 2; 32 & 33 Vict. c. 36; 34 & 35 Vict. c. 103, sec. 30).

The above-mentioned rules, qualifications, and exemptions now extend to women by virtue of the provisions of the Sex Disqualification (Removal) Act, 1919 (9 and 10 Geo. V. c. 71). This Act by section one provides *inter alia* that "a person shall not be exempted by sex or marriage from the liability to serve as a juror."

Provisions for carrying the enactment into effect are contained in the Jurors (Enrolment of Women) (Scotland) Act, 1920 (10 & 11 Geo. v. c. 53), sec. 3 and in the Act of Sederunt, 5th February, 1921. See p. 420. They are shortly as follows:—

(1) (a) The Sheriff may, in his discretion, on application made by the parties, or either of them or at his own instance, make an order that the jury shall be composed of men only or of women only, as the case may require. Act of 1919, sec. 1 (b).

(b) Such application is to be made by motion at the time when a date is appointed for the trial. A.S., sec. 1.

(c) If the order is made the Sheriff-Clerk makes up a jury list of men only or women only, as the case may be. A.S., sec. 2 (b).

(d) If there is no such order the jury list is to consist as nearly as possible of equal numbers of men and women jurors; the proportion of special jurors being also as nearly as possible equal. A.S., sec. 3.

(e) The names of the persons appearing on the list are to be placed in the appropriate box or glass according as they are special or common jurors, but irrespective of whether they are men or women. The ballot is conducted according to the existing method. A.S., sec. 4.

(2) The Sheriff may, on application by a woman to be exempted from service on a jury in respect of any case, by reason of the nature of the evidence to be given, or of the issue to be tried, grant such exemption. Act of 1919, sec. 1 (b).

(3) Any woman summoned to serve on a jury is entitled to apply to be exempted from service on account of pregnancy or other feminine condition or ailment on application to the Sheriff-Clerk, producing evidence not later, unless on special cause shown, than the third day before the trial. Act of 1919, sec. 1 (b). A.S., sec. 5.

(4) The Sheriff may, at any time before the jury is empanelled, grant exemption, in his discretion, to any woman in respect of any of the before-mentioned reasons. A.S., sec. 5 (d).

The jury is cited by the Sheriff-Clerk from the Sheriff Court Jury Book in the manner prescribed by law, or in use to be followed, for the citation of jurors in Scotland. Rule 134.

All statutory or other regulations and customs relative to the citation, non-attendance, selection, and swearing of jurors are (subject to rule 135 dealing with rights of challenge) to apply to jury trial in the Sheriff Court. Rule 134.

5. Payment of Jurors.—The party moving for jury trial has, each day the trial proceeds, and before the proceedings commence, to deposit with the Sheriff-Clerk the sum of three pounds ten shillings, which deposit forms part of the expenses of the cause; failing any such deposit being made, the Sheriff may dismiss the cause. Out of said fund the Sheriff-Clerk is to pay to each juror a fee of ten shillings for each day on which he is empanelled. When a jury trial is not proceeded with, the deposit is to be returned to the depositor. Sec. 33.

III. PROCEDURE AT TRIAL

1. Challenge of Jurors.—Each party (collectively, not individually) has the right to challenge one special and one common juror. Rule 135.

The list of jurors cited should be lodged in reasonable time before the trial, so that the parties may see it; but there is no provision as to this.

2. Leading Evidence.—The law and practice relating to the taking of evidence in proofs before the Sheriff applies to jury trials. Rule 137.

A record of the proceedings is taken by an official shorthand writer of the Court (unless the parties by minute dispense with it), but the notes need not be extended unless for the purpose of appeal. Rule 137.

When evidence has been taken to lie *in retentis*, if the Sheriff is satisfied that the deposing witness is dead, or that he cannot attend at the trial owing to absence, or infirmity, or other sufficient cause, it is competent for the Sheriff, on the motion of any party in the cause (irrespective of which party moved for the commission to take such evidence), to direct that the report of the commission be read to the jury. When so read, the report forms part of the evidence in the cause; but depositions are not read or referred to if the deposing witness attends at the trial. Rule 138.

Exceptions taken, in the course of the trial, to rulings of the Sheriff in regard to admission or rejection of evidence, or in regard to points of law laid down during the trial or in the Sheriff's charge to the jury, if required by the party taking the exception, are to be recorded, to the Sheriff's dictation, upon the official shorthand notes, before the jury proceed to consider their verdict. Rule 139.

If the Sheriff deem it necessary to charge the jury, he is to do so immediately after, or as soon as practicable after, the conclusion of the speeches; or, if none be made, after the conclusion of the evidence. Rule 141.

3. Proposing Questions to the Jury.—At the trial the Sheriff may, or if required by either party shall, after the conclusion of the evidence propound to the jury question or questions of fact to be answered by them, and the jury shall in their verdict give specific answers to such question or questions. Act of 1913, sec. 6.

This provision comes in place of the requirement of the Act of 1907, sec. 32, under which the Sheriff was directed, after trial had been ordered, to issue an interlocutor setting forth the question or questions of fact to be at the trial proposed to the jury. This method of procedure formed the subject of judicial comment in the cases of *Adamson v. Fife Coal Co. Ltd.*, 1909, S.C. 580; 46 S.L.R. 459; 1 S.L.T. 196; *M'Vicar v. Robertson*, 1910, S.C. 396; 47 S.L.R. 341; 1 S.L.T. 116; *Taylor v. Sutherland*, 1910, S.C. 644; 47 S.L.R. 541; 1 S.L.T. 334; *Whitton v. Ewing*, 1911, S.C. 781; 48 S.L.R. 672; 1 S.L.T. 322. Many of the observations in these cases may remain applicable to the altered procedure. See also *Ferguson v. North British Railway Co.*, 1915, S.C. 566; 52 S.L.R. 402; 1915, 1 S.L.T. 171.

There is no provision in the Act or rules for any opening statement of the case to the jury, either by judge or agents, but it is desirable that the ordinary practice observed in the Supreme Court should be followed so far as appropriate in this as in other matters.

4. Verdict.—The jury may return a verdict by a majority of its number at any time not less than one hour after the jury has been enclosed. Rule 143.

The only direction in the Act as to the form of the verdict is that "the jury shall in their verdict give specific answers to such question or questions," *i.e.* questions proposed to them by the Sheriff in terms of sec. 6 of the Act of 1913.

The verdict is recorded upon the interlocutor sheet and signed by the Clerk of Court; and this having been done, the jury is discharged. Rule 145.

IV. PROCEDURE AFTER TRIAL

Any party in the cause may, as soon as the verdict has been recorded, or within fourteen days thereafter, move the Sheriff to apply the verdict. The Sheriff may hear parties on this motion, and may make *avizandum*. As soon as practicable, the Sheriff issues an interlocutor applying the verdict, and granting decree accordingly. In this interlocutor the Sheriff disposes of the question of expenses. This is the final judgment in the cause. Rule 146 and sec. 31.

The decision in *M'Vicar v. Robertson & Son*, 1910, S.C. 396; 47 S.L.R. 341; 1 S.L.T. 116; 26 Sh. Ct. Rep. 1, 79, that the answers of the jury to questions proposed should not be embodied in the interlocutor is apparently equally applicable to the altered procedure.

"Accordingly" in rule 146 is evidently intended to mean "in accordance with the terms of the verdict" as the Sheriff may construe it.

V. APPEALS IN JURY TRIALS

Appeal is competent to either Division of the Court of Session on certain specific grounds. Sec. 31. There is no appeal if shorthand notes of the evidence have not been taken. Rule 147.

Adair v. Colville & Sons, Ltd., 1922, S.C. 672; 59 S.L.R. 482; 1922 S.L.T. 532.

Appeal must be taken within fourteen days of the interlocutor applying the verdict. Rule 148.

The appeal is taken by lodging with the Sheriff-Clerk a note of appeal in Form M. Rule 148. The form will be found on p. 334.

The powers of the Court in regard to appeals against the verdict of a jury are defined by sec. 31 of the Act of 1907, as amended by the Act of 1913, as follows:—"Upon such appeal the Court may refuse the appeal or may find that the verdict was erroneously applied and give judgment accordingly, or may set aside the verdict and order a new trial, provided that if the judges are equally divided in opinion the verdict shall stand."

The word "accordingly" evidently means in accordance with what the Court considers to be the proper application of the verdict.

The grounds of appeal are the following:—

1. That the verdict has been erroneously applied by the Sheriff. Act, sec. 31.

If a general verdict in favour of either party is returned there can hardly be room for error in its application by the Sheriff. The cases referred to on page 116 illustrate the chances of miscarriage of justice where special questions are proposed. In the Court of Session the "special verdict" is rare, but there are instances of the jury having returned verdicts on special facts in addition to the general verdict.

Illustrations are met with in *Adams v. G. & S.-W. Railway Co.*, 1875, 3 R. 215; 13 S.L.R. 136; *King v. N.B. Railway Co.*, 1874, 12 S.L.R. 53; *Wilson v. Boyle*, 1889, 17 R. 62; 27 S.L.R. 57; *Kane v. Stephen & Sons*, 1900, 2 F. 739; 37 S.L.R. 529; 7 S.L.T. 419; *Burns v. Steel Co. of Scotland*, 1893, 21 R. 39; 31 S.L.R. 41; 1 S.L.T. 286.

2. That the verdict is contrary to the evidence. Act, sec. 31.

The principles established in the Court of Session in regard to the granting of a new trial in respect of the verdict being contrary to the evidence will be applicable to appeals from the Sheriff Court jury. It may be stated as

a general rule that it will not be sufficient ground for the granting of a new trial that the Appeal Court considers the verdict wrong or would have decided the case differently upon the facts. It must be demonstrated either (a) that there is no legal evidence to support the verdict, or (b) that the verdict is directly contrary to the evidence, or (c) that by no possible view of the evidence could the verdict be upheld.

Illustrative cases are: *Johnstone v. Dilke*, 1875, 2 R. 836; 12 S.L.R. 486; *Ross v. M'Kittrick*, 1886, 14 R. 255; 24 S.L.R. 190; *Kinnell v. Peebles*, 1890, 17 R. 416; 27 S.L.R. 365; *Fraser v. Edinburgh Tramway Co.*, 1882, 10 R. 264; 20 S.L.R. 192; *Campbell v. Scottish Educational News*, 1906, 8 F. 691; 43 S.L.R. 487; 13 S.L.T. 925; *Littlejohn v. Brown & Co. Ltd.*, 1909, S.C. 169; 46 S.L.R. 42; 16 S.L.T. 446 (evidence inconsistent with averments led without objection); *M'Ghee v. Glasgow Coal Co. Ltd.*, 1923, S.C. 293; 60 S.L.R. 206; 1923 S.L.T. 120.

3. That the Sheriff had in the course of the trial unduly refused or admitted evidence. Act, sec. 31.

Although not expressly required by the Act or rules, it is thought that appeal on this head would only be competent where objections had been taken and noted at the time, under rule 139.

Adamson v. Fife Coal Co. Ltd., 1909, S.C. 580; 46 S.L.R. 459; 1 S.L.T. 196.

Illustrations are found in *Crawford v. Lusk*, 1884, 12 R. 25; 22 S.L.R. 25; *Murray v. Lanark Road Trustees*, 1888, 15 R. 737; 25 S.L.R. 645. As to the method of statement of appeal on ground of evidence being unduly admitted or rejected, see *Connolly v. Clyde Navigation Trustees*, 1902, 5 F. 8; 40 S.L.R. 14; 10 S.L.T. 290; *Glass v. Paisley Race Committee*, 1902, 5 F. 14; 40 S.L.R. 17; 10 S.L.T. 298.

4. That the Sheriff had in the course of the trial misdirected the jury. Act, sec. 31.

The allowance of this ground of appeal presents difficulties. If the jury find upon specific questions of fact, and the Sheriff decides the legal effect of the finding of the jury upon the separate facts, as in the case of an ordinary

judgment, in which the Sheriff first finds various facts proved, and then proceeds with the resultant findings in law, there does not seem to be room for direction in law to the jury, who are not to apply it. If, however, a general verdict is taken then the direction of the Sheriff may be of the utmost importance. But the charge to the jury is in the discretion of the Sheriff, from which it appears that it is not imperative on the Sheriff to give the jury any direction in law.

M'Coll v. Alloa Coal Co. Ltd., 1909, 46 S.L.R. 465; 1 S.L.T. 282 (verdict set aside in respect of directions by Sheriff on matters of fact).

5. That an award of damages is excessive. Act, sec. 31.

The rule established in the Court of Session is that to justify a setting aside of the verdict on the ground of excessive damages, the amount must be unsupportable.

Illustrative cases are: *Shields v. N.B. Railway Co.*, 1874, 2 R. 126; 12 S.L.R. 120; *Young v. Glasgow Tramway Co.*, 1882, 10 R. 242; 20 S.L.R. 169; *Macmaster v. Caledonian Railway Co.*, 1885, 13 R. 252; 23 S.L.R. 181; *Wallace v. West Calder Co-operative Co.*, 1888, 15 R. 307; 25 S.L.R. 458; *Casey v. United Collieries, Ltd.*, 1907, S.C. 690; 44 S.L.R. 522; 14 S.L.T. 896; *Clippens Oil Co. Ltd. v. Edinburgh, etc., Water Trustees*, 1907 (H.L.) S.C. 9; 44 S.L.R. 669; 15 S.L.T. 92; *Thoms v. Caledonian Railway Co.*, 1913, S.C. 804; 50 S.L.R. 498; 1 S.L.T. 337; *M'Kiernan v. Glasgow Corporation*, 1919, S.C. 407; 56 S.L.R. 285; 1919, 1 S.L.T. 204; *Elliot v. Glasgow Corporation*, 1922, S.C. 146; 59 S.L.R. 140; 1922 S.L.T. 54.

If parties consent the Court may fix a reduced amount of damages, *Boal v. Scottish Catholic Printing Co. Ltd.*, 1908, S.C. 667; 45 S.L.R. 476; 15 S.L.T. 940.

6. That an award of damages is inadequate. Act, sec. 31.

The circumstances to justify the setting aside of a verdict on this ground will be very exceptional.

Black v. Croall, 1854, 16 D. 431; *Reid v. Morton*, 1902, 4 F. 438; 39 S.L.R. 313; 9 S.L.T. 389; *Madden v. Glasgow Corporation*, 1923, S.C. 102; 60 S.L.R. 86; 1922 S.L.T. 665.

None of the above grounds of appeal cover the case of objections to the questions propounded at the trial. While

the difficulties experienced under the former practice of framing the questions in the record alone have been lessened, there still remain difficulties in working out the new practice. There is no direction given in the Act for the parties stating questions which they desire to have proposed, and there is no provision for review of the questions or for setting aside a verdict obtained on improper questions.

Adamson v. Fife Coal Co. Ltd., 1909, S.C. 580; 46 S.L.R. 459; 1 S.L.T. 196.

Irregularities in Trial. — The grounds of appeal laid down as competent do not include various cases of irregularity or miscarriage of justice, which are recognised in the Court of Session as grounds for setting aside the verdict of a jury.

Such, for instance, are (a) disqualification of a juror, *Watson v. N.B. Railway Co.*, 1901, 3 F. 342; 38 S.L.R. 252; 8 S.L.T. 350; (b) conduct of a juror visiting locus, *Sutherland v. Prestongrange Coal Co.*, 1888, 15 R. 494; 25 S.L.R. 359; *Hope v. Gemmell*, 1898, 1 F. 74; 36 S.L.R. 81; 6 S.L.T. 204; (c) misunderstanding by jury as to verdict, *Fullarton v. Caledonian Railway Co.*, 1882, 10 R. 70; 20 S.L.R. 45; *Pirie v. Caledonian Railway Co.*, 1890, 17 R. 1157; 27 S.L.R. 973.

Apparently the remedy in the exceptional cases which amount to a miscarriage of justice will be by reduction in the Court of Session, but see *Adair v. Colville & Sons, Ltd.*, 1922, S.C. 672; 59 S.L.R. 482; 1922 S.L.T. 532.

Procedure in Appeals against the Interlocutor applying the Verdict of a Jury.—This subject is dealt with at p. 237.

CHAPTER XII.

INCIDENTAL PROCEDURE IN ORDINARY ACTION

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I. AMENDMENTS

As previously stated, when dealing with the closing of the record, each party has, at the time of closing the record, an opportunity of revising, supplementing, and altering his averments and pleas, with the view of amending his own case, or of meeting the case presented against him, and it is his duty at that stage so to revise his condescendence or defences, as the case may be, and his pleas in law, in conformity with the ordinary rules and practice of pleading. The question of amendment, using the term in its proper and technical meaning, arises only (1) where at any stage of the cause it is desired to make an alteration on the names or designation of the parties, either pursuer or defender, or on the remedy sought in the crave or prayer of the initial writ, *i.e.* as regards the parties or the prayer,

and (2) where after the record has been closed, it is desired to alter the terms of the condescendence or defences, or to vary or add pleas in law.

As to the difference between adjustments and amendments, see *M'Vean v. Dunn*, 1895, 3 S.L.T. 89.

As to application of rules dealing with amendment to proceedings under the Workmen's Compensation Act, see *O'Donnell v. Wilson*, 1910, S.C. 799; 47 S.L.R. 707; 2 S.L.T. 3.

The subject of amendment is regulated by rules 79 and 80.

In the case of undefended actions, amendments are regulated by rule 26.

Rule 79 is as follows :—

“Upon the motion of either party the Sheriff may, at any stage of the cause, and upon such conditions as to expenses, re-service, or otherwise as he shall deem proper, allow a record to be altered or amended to the effect of determining the real question in controversy (including amendment of the instance and the initial writ and the adding of parties), notwithstanding that the conclusions of the action may thereby be enlarged or altered.”

Rule 79 may be compared with the provisions as to amendments in the Court of Session contained in the Codifying Act of Sederunt, B, i., 1 to 7. It is evidently the intention that rule 79 should have the same effect in a Sheriff Court cause as the provisions of C.A.S., B, i., 7, have in a cause in the Court of Session. See p. 126.

The following points arising on rule 79 may be noticed :—

1. Discretion of Sheriff as to Amendment.—Under the Sheriff Courts Act of 1876, sec. 24, the parties were entitled to make “all such amendments as may be necessary for the purpose of determining in the action the real question in controversy between the parties.” It is thought that notwithstanding the alteration in rule 79, a party would still be entitled as matter of right to make amendments which complied with the requirements of the rule.

2. Time of Amendment.—The Act allows amendment “at any stage of the cause.” Rule 79. The time at which the amendment is made may have a material bearing on the question of expenses.

As illustrating amendments at a late stage of the cause, see *Rose v. Johnston*, 1878, 5 R. 600; 15 S.L.R. 325; *Guinness v. Coats Iron Co.*, 1891, 18 R. 441; 28 S.L.R. 285 (after judgment); *Gray v. Cruelty Prevention Society*, 1890, 17 R. 789; 27 S.L.R. 906; and *Govan Rope, etc., Co. v. Weir & Co.*, 1897, 24 R. 368; 34 S.L.R. 310; 4 S.L.T. 245 (after cause taken to avizandum); but cf. *Menzies v. Menzies*, 1890, 17 R. 881; 27 S.L.R. 721; *Stevens v. Motherwell Entertainments Ltd.*, 1914, S.C. 957; 51 S.L.R. 818; 1914, 2 S.L.T. 170. There are possible restrictions on the competency of amendments, as regards the position of the litigation; e.g. *Terrell v. Ker*, 1900, 2 F. 1055; 37 S.L.R. 807; 8 S.L.T. 74; *Arthur v. Lindsay*, 1895, 22 R. 417; 32 S.L.R. 334; 2 S.L.T. 546; *M’Gowan v. Cramb*, 1897, 24 R. 481; 34 S.L.R. 345; 4 S.L.T. 289 (amendments conflicting with interlocutors which had not been brought under review), also where amendments would involve allowance of additional proof, *Brown v. Hastie*, 1904, 6 F. 1001; 41 S.L.R. 838; 12 S.L.T. 239, unless in the exceptional case of new facts coming to light, as in *Johnston v. Johnston*, 1903, 5 F. 336; 40 S.L.R. 499; 10 S.L.T. 740; *Balfour-Kinnear v. Balfour-Kinnear*, 1919, S.C. 391; 56 S.L.R. 282; 1919, 1 S.L.T. 218.

In the case of late amendments care must be taken that the opposite party has full opportunity of meeting the altered situation, *Oswald v. Fairs*, 1911, S.C. 257; 48 S.L.R. 279; 1 S.L.T. 114 (plea of misrepresentation after proof led).

3. Extent of Amendment competent.—The record may be altered or amended to the effect of determining the real question in controversy. This power includes—

- (a) Amendment of the instance.
- (b) Amendment of the initial writ.
- (c) The adding of parties.

While dealt with merely as an allowable result of amending, the last clause of the rule is no doubt intended to be equivalent to a positive enactment to the effect that the conclusions of the action may be enlarged or altered.

The removal by this rule of several of the restrictions previously attaching to the right to amend, renders many previous decisions on the subject of amendment no longer applicable.

As to amendments of the instance, see *Caven v. Dalbeattie Magistrates*, 1908, 25 Sh. Ct. Rep. 109; *Whelland v. Mackay*, 1908, 24 Sh. Ct. Rep. 157; *Klein v. Lindsay*, 1909, 1 S.L.T. 89 (amendment allowed enabling pursuer suing as an individual to sue in a representative capacity); *Doughty Shipping Co. Ltd. v. N.B. Railway Co.*, 1909, 1 S.L.T. 267; *Rackstraw v. Douglas*, 1919, S.C. 354; 56 S.L.R. 253; 1919, 1 S.L.T. 158 (amendment allowed to sist a party who had a title to sue by assignation subsequent to raising action); *Duncanson v. Anderson*, 1908, 15 S.L.T. 684; *Morison v. Morison's Exrs.*, 1912, S.C. 892; 49 S.L.R. 578; 1 S.L.T. 384 (new pursuer); *Kennedy v. Shotts Iron Co. Ltd.*, 1910, 2 S.L.T. 329 (new defender). A radical defect in the instance whether as regards pursuer or defender cannot be cured by amendment, *Clugston v. Scottish Women's Friendly Society*, 1914, 30 Sh. Ct. Rep. 150; *Scotland v. Free Gardeners etc., Friendly Society*, 1917, 33 Sh. Ct. Rep. 93. Cf. *Bethune v. Turnbull*, 1918, 34 Sh. Ct. Rep. 309; *Cooney v. Murdoch*, 1918, 34 Sh. Ct. Rep. 318.

Difficulty may still arise as to whether amendments of the crave of the writ are such as to be justified, and the result depends upon a consideration of the real question at issue.

Amendments which would not be allowed would fall into the following categories:—(1) Amendments after final judgment, before referred to; (2) amendments of an action radically incompetent, *Morley v. Jackson*, 1888, 16 R. 78; 26 S.L.R. 52; *Skerret v. Oliver*, 1896, 23 R. 468; 33 S.L.R. 323; *Macleod v. Harrison*, 1880, 8 R. 227; 18 S.L.R. 129; *Clark v. Adams*, 1885, 12 R. 1092; 22 S.L.R. 740; but cf. *Bank of Scotland v. Ferguson*, 1898, 1 F. 96; 36 S.L.R. 89; 6 S.L.T. 205; *Hope v. Derwent Rolling Mill Co.*, 1905, 6 F. 837; 42 S.L.R. 294; *Paterson v. Wallace*, 1909, S.C. 20; 46 S.L.R. 97; 16 S.L.T. 540 (plea of no title to sue not allowed to be added where there was no defence on merits); (3) clearly irrelevant amendments, *Woodside Co. v. Dick & Stevenson*, 1888, 16 R. 242; 26 S.L.R. 165; (4) amendments which are not "to the effect of determining the real question in controversy." The application of this test, which is in very similar terms to the provision of the Court of Session Act of 1868 and the Sheriff Courts Act of 1876, has often presented difficulty in its application to individual cases. In the following cases amendments were refused as raising a different question from that upon which the pursuer came into Court, and the principles enunciated seem to be still applicable notwithstanding the wider powers of amendment now authorised; e.g. *Dobell & Co. v. Nelson*, 1904, 7 F. 281; 42 S.L.R. 279; 11 S.L.T. 678 (claim to right of property not allowed to be altered into claim for security); *Leny v. Dunfermline Magistrates*, 1894, 21 R. 749; 31 S.L.R. 617; *Louden v. Ayr Tailors*, 1891, 18 R. 549; 28 S.L.R. 407.

Cf. *Summerlee Iron Co. Ltd. v. Caledonian Railway Co.*, 1911, S.C. 458; 48 S.L.R. 536; 1 S.L.T. 103 (where a conclusion for implement became inoperative, a conclusion for damages was allowed to be substituted).

Under rule 79 it has been held incompetent to change an action for payment into an action for delivery, *Ford v. Ford*, 1912, 28 Sh. Ct. Rep. 226. See also *Invergordon Auction Co. v. Macmillan*, 1908, 24 Sh. Ct. Rep. 187 (new pursuer); *Caven v. Dalbeattie Magistrates*, 1908, 25 Sh. Ct. Rep. 109; and *Fischer & Co. v. Andersen*, 1896, 23 R. 395; 33 S.L.R. 306; 3 S.L.T. 230 (pursuer taken out of summons).

The C.A.S., B, i., 1 to 7, applicable to the Court of Session, contains express provisions for amending records by sisting pursuers, and altering the character of a pursuer or defender; correcting errors in the name or description of a pursuer or defender; calling additional defenders; increasing the sum sued for, or subjecting any other additional funds or property to the adjudication of the Court; allowing any amendment of the summons or other writ for the purpose of determining in the existing action the real question in controversy between the parties. The provisions of the C.A.S. have been printed for reference on p. 350.

It is to be presumed that the framers of the Sheriff Courts Act of 1907 had these provisions before them, and that the intention was that rule 79 should be applied in the same way and to the same extent as in the Act of Sederunt.

The term *res noviter veniens ad notitiam*, in common use in Sheriff Court practice prior to 1876, has now little legal significance. Previous to the Sheriff Courts Act of 1876, it was not permissible to add to the record by way of amendment any averments of facts which might have been discovered prior to the closing of the record. Since the passing of that Act, however, the time of discovery of new facts is only important if an application is made for an allowance of additional proof.

4. Conditions of Amendment.—Rule 79 authorises amendment “upon such conditions as to expenses, re-service, or otherwise,” as the Sheriff shall deem proper.

Liability for expenses is the usual condition imposed, and the matter being entirely in the discretion of the Court, no rules can be laid down. The following principles are, however, generally followed:—(1) The expense of amendments curing defects in the instance or the calling of defenders will, unless caused by the fault of the defenders, fall upon the pursuers. Cf. C.A.S., B, i. (2) Verbal amendments, or such as remedy defective specification where no additional expense is caused to the other side, will be

allowed without expenses being awarded, or on a nominal award only, *Macdonald v. Forsyth*, 1898, 25 R. 870; 35 S.L.R. 634; 5 S.L.T. 380. (3) Any expenses caused to the opposite party by the amendment will be laid upon the party amending, *Murdison v. Scottish Football Union*, 1896, 23 R. 449; 33 S.L.R. 337; 3 S.L.T. 273. (4) Payment of expenses is not a condition of the amendment being allowed, unless expressly stated in the interlocutor, *Haughton v. N.B. Railway Co.*, 1892, 20 R. 113; 30 S.L.R. 111. Failure to pay expenses may lead to absolvitor, *Dougall v. Caledonian Railway Co.*, 1913, S.C. 349; 50 S.L.R. 220; 1912, 2 S.L.T. 442. (5) In many cases the equitable course in allowing an amendment is to reserve the question of expenses. This means that at a later stage the Court may decide how they are to fall, and if they are not expressly dealt with they fall under the general finding of expenses at the end of the case, *Clippens Oil Co. v. Edinburgh and District Water Trust*, 1905, 7 F. 914; 42 S.L.R. 698; 13 S.L.T. 220; *Paton v. Macknight*, 1897, 24 R. 554; 34 S.L.R. 445; 4 S.L.T. 331.

It is not apparent what other conditions beyond expenses can be imposed, but see *Duthie Brothers v. Duthie*, 1892, 19 R. 905; 29 S.L.R. 808. Service on parties other than those already called, or who have appeared may, of course, be necessary.

The right to amend may be affected by the parties' conduct; e.g. where probation has been renounced, *Carswell v. Finlay*, 1887, 24 S.L.R. 643; or where a judicial reference has been entered upon, *Brown's Trs. v. Horne*, 1907, S.C. 1027; 44 S.L.R. 795; 15 S.L.T. 145.

5. Effect of Amendment.—An amendment does not validate diligence used prior thereto on the dependence of the action so as to prejudice the rights of creditors of the defender interested in defeating such diligence. It operates to the effect of obviating objection to such diligence when stated by the defender himself, or by any person representing him by a title, or in right of a debt contracted by him subsequent to the execution of such diligence. Rule 80.

Fischer & Co. v. Andersen, 1896, 23 R. 395; 33 S.L.R. 306; 3 S.L.T. 230 (arrestment used on incompetent action not made good by action being made competent by amendment); *Bank of Scotland v. Ferguson*, 1898, 1 F. 96; 36 S.L.R. 89; 6 S.L.T. 205; *Hope v. Derwent Rolling Mill Co.*, 1905, 7 F. 837; 42 S.L.R. 794; 13 S.L.T. 364.

6. Procedure in amending.—There are no statutory

rules dealing with the method of effecting an amendment. If the amendment is merely verbal or unimportant, it may be effected by motion. Otherwise it is made by the party lodging a minute stating the addition or alteration he proposes. If necessary, the Sheriff allows the other party to answer the new matter, and thereafter the amendment and answers thereto are allowed by interlocutor.

The amendment should be written upon the pleading which is amended, and should be authenticated by the initials of the agent and the Sheriff. The general practice is to open the record, allow the amendment to be made thereon, and then to re-close the record, but this formality does not seem to be essential.

A party may be entitled to expenses beyond the ordinary table of fees in obtaining information to answer an amendment, *Delhi, etc., Bank v. Loch*, 1895, 22 R. 250; 32 S.L.R. 202; 2 S.L.T. 423.

Amendment of an amendment is competent, *Lynch v. Stewart*, 1871, 9 M. 860; 43 J. 522.

II. SISTING MANDATORY AND CAUTION OR SECURITY FOR EXPENSES

In certain circumstances the Court may ordain a party to sist a mandatory, or to find caution or security for expenses.

A mandatory is responsible for the conduct of the cause as well as for expenses, whereas the cautioner is liable for expenses only. In practice, this distinction is of little importance.

A mandatory is not entitled to compromise an action, *Thoms v. Bain*, 1888, 15 R. 613; 25 S.L.R. 443.

A mandatory may withdraw, and after withdrawal his liability for costs ceases. He is liable down to the date of his withdrawal, *Erskine v. Walker's Trs.*, 1883, 10 R. 717; 20 S.L.R. 457.

As to the extent of a mandatory's liability, see *Renfrew v. Brown*, 1861, 23 D. 1003; *Webster v. Webster*, 1896, 33 S.L.R. 369; 3 S.L.T. 255 (not liable for interim aliment awarded to wife).

An interlocutor merely ordaining pursuer "to find caution for expenses" was held to cover future expenses only, *Douglas v. M'Kinlay*, 1902, 5 F. 260; 40 S.L.R. 238; 10 S.L.T. 480.

Ordering caution or the sisting of a mandatory is a matter entirely within the discretion of the Court, but

general practice has resulted in the adoption of fairly well defined rules, which may be laid down as follows :—

1. Foreign Pursuer.—The general rule is that a party who raises an action in the Scottish Courts will be required to sist a mandatory, if he is resident abroad.

The rule was held to apply to objections by a beneficiary to a factor's discharge, *Lowson v. Lowson*, 1902, 4 F. 692; 39 S.L.R. 444.

The rule was not applied where a foreigner was one of several next-of-kin suing for residue, *Armour and Others v. Glasgow Infirmary*, 1908, 16 S.L.T. 435. Nor where it appeared on the record that there was something due to the pursuer, *M'Lean v. M'Garvey*, 1908, 16 S.L.T. 174. Nor to a foreigner suspending a charge, *Seaman v. Butters*, 1911, 2 S.L.T. 198.

It may not be a sufficient answer to a demand for a mandatory that the pursuer offers to reside in this country, *Dickey v. British Mexican Railway Co.*, 1893, 1 S.L.T. 273.

The following exceptions may be noted :—

(a) The rule is not applied to a party resident in England or Ireland.

This exception has been recognised in view of the competency of doing diligence in England and Ireland upon decrees of the Scottish Courts. This was brought about by the Judgments Extension Act, 1868, as regards the Court of Session, and by the Inferior Courts Judgments Extension Act, 1882, as regards the Sheriff Court, *Lawson's Trs. v. British Linen Co.*, 1874, 1 R. 1065; 11 S.L.R. 592; *Dessau v. Daish*, 1897, 24 R. 976; 34 S.L.R. 739; 5 S.L.T. 74 (pursuer a foreigner impecunious and only temporarily in England). *Withers v. Lattimore*, 1921, 37 Sh. Ct. Rep. 147; *M'Gildowney v. Hart*, 1911, 27 Sh. Ct. Rep. 37.

(b) Where the absence is compulsory the rule may not be applied.

Graham v. Graham's Trs., 1901, 4 F. 1; 39 S.L.R. 3; 9 S.L.T. 205 (soldier sent abroad on service).

(c) There is a general exception of claimants in an action of multiplepounding.

A foreigner claiming in a multiplepounding was held not bound to sist a mandatory, *N.B. Railway Co. v. White*, 1881, 9 R. 97; 19 S.L.R. 59; *Town and County Bank v. Lilienfield*, 1900, 8 S.L.T. 227; *Stow's Trs. v. Silvester*, 1900, 8 S.L.T. 253; *Gordon's Trs. v. Forbes*, 1904, 6 F. 455; 11 S.L.T. 697 (claimant in multiplepounding

was allowed to proceed after leaving the country); *Elmslie v. Pauline*, 1905, 7 F. 541; 42 S.L.R. 401; 12 S.L.T. 784 (unsuccessful claimant in Sheriff Court allowed to appeal without finding caution); *Robertson-Durham* (liquidator, *Bruce Peebles & Co.*) v. *Stern & Watt*, 1909, 47 S.L.R. 77; 2 S.L.T. 297 (claimant litigating with liquidator required to sist mandatory).

(d) The ordinary rules do not apply to consistorial causes.

Low v. Low, 1905, 12 S.L.T. 817.

2. Bankrupt Pursuer.—Where a pursuer is bankrupt at the time he raises the action, or in the course of litigation becomes bankrupt, whether by sequestration or granting a trust deed, he will, as a general rule, be required to find caution for expenses. The principle is not that such a person has no funds, but that the pursuer has no real interest in the result of the action.

As to effect of lapse of time since the bankruptcy, see *Nakeski-Cumming v. Gordon's Factor*, 1923, 60 S.L.R. 486; 1923 S.L.T. 482.

The rule has been applied, and caution has been ordered in the following cases :—

(a) Reduction of a decree of cessio, *Gilmour v. Donnelly*, 1899, 7 S.L.T. 267; *Fraser v. Mackenzie*, 1874, 12 S.L.R. 74 (sole partner of a firm sequestrated and then assuming new partner).

(b) Appeal by a bankrupt against a deliverance on his claim in another sequestration, *Stewart v. Dunmore's Trs.*, 1891, 19 R. 4; 29 S.L.R. 22.

(c) A consenting pursuer who was an undischarged bankrupt, *Douglas v. M'Kinlay*, 1902, 5 F. 260; 40 S.L.R. 238; 10 S.L.T. 480.

Exceptions to this rule have been admitted, and caution was not required in the following classes of cases :—

(a) Where a bankrupt was allowed to carry on a business in connection with which the litigation arose, *Kennedy v. Crawford*, 1899, 7 S.L.T. 26; *M'Call v. Gettens*, 1905, 13 S.L.T. 149; *Thom v. Caledonian Railway Co.*, 1902, 9 S.L.T. 440; *Burnett v. Murray*, 1877, 14 S.L.R. 616.

(b) Where the bankruptcy occurred after the pursuer had obtained a judgment in his favour, he was allowed to defend the judgment on an appeal, *Ferguson v. Leslie*, 1873, 11 S.L.R. 16.

(c) Where, notwithstanding the bankruptcy, the pursuer had a substantial interest in the result of the action, *M'Alister v.*

Swinburne, 1873, 1 R. 166; 11 S.L.R. 62 (action by bankrupt for declarator that certain claims by creditors had been discharged); *Cooper v. Frame & Co.*, 1893, 20 R. 920; 30 S.L.R. 807; 1 S.L.T. 125; *Paton v. Paton's Trs.*, 1901, 8 S.L.T. 455 (claim to fund to which creditors had given up right); *Derrick v. Derrick*, 1900, 8 S.L.T. 321 (claim of damages for adultery); *Heddle v. Melrose-Drover & Co.*, 1905, 7 F. 852; 42 S.L.R. 650; 13 S.L.T. 197 (appeal in petition by bankrupt for discharge). But this principle was not extended to a claim by a bankrupt for a share of the profits of a joint adventure not being result of personal labour, *Buchanan v. Peyton*, 1897, 4 S.L.T. 324.

(d) In actions for accounting by a bankrupt against his trustee to whom he had granted a voluntary trust deed, *Ritchie v. M'Intosh*, 1881, 8 R. 747; 18 S.L.R. 528; *Rogerson v. Rogerson's Trs.*, 1885, 22 S.L.R. 673.

(e) Actions for damages for defamation of character. In this class of cases the rule has not been consistently applied, and the whole circumstances of the case are taken into consideration. *Scott v. Johnston*, 1885, 12 R. 1022; 22 S.L.R. 546; *Macrae v. Sutherland*, 1889, 16 R. 476; 26 S.L.R. 335 (in the above cases, caution was not required). In the following actions for damages for slander, caution was required, viz.:—*Clarke v. Muller*, 1884, 11 R. 418; 21 S.L.R. 290 (no absolute rule—discretion of Court); *Collier v. Ritchie*, 1884, 12 R. 47; 22 S.L.R. 38 (unexplained delay of two years); *Scott v. Roy*, 1886, 13 R. 1173; 23 S.L.R. 855 (action held to be frivolous); *Brown v. Oliver & Co.*, 1895, 3 S.L.T. 43; *Powell v. Long*, 1896, 23 R. 955; 33 S.L.R. 693; 4 S.L.T. 70 (pursuer could not be found); *Munro v. Mudie*, 1901, 9 S.L.T. 53; *Watson v. Williamson*, 1895, 3 S.L.T. 21; *Cook v. Kinghorn*, 1904, 12 S.L.T. 186; *Miller v. J. M. Smith, Ltd.*, 1908, 16 S.L.T. 268; *Johnston v. Laird & Son*, 1915, 2 S.L.T. 24.

(f) In action for damages for illegal acts raised by tenant against his landlord, *Thom v. Andrew*, 1888, 15 R. 780; 25 S.L.R. 595 (circumstances very exceptional), and *M'Quator v. Wellwood*, 1908, 16 S.L.T. 110 (no defence on merits).

3. Poverty of Pursuer.—Poverty or impecuniosity is not a ground for requiring a pursuer to find caution.

In the following cases illustrating this rule, caution was not required:—

(a) Where a pursuer had been bankrupt but was discharged, *Cunningham v. Skinner*, 1902, 4 F. 1124; 39 S.L.R. 727; 10 S.L.T. 148; *Cooper v. Frame*, 1893, 20 R. 920; 30 S.L.R. 807; 1 S.L.T. 125 (discharged bankrupt without composition allowed to sue for estate not taken up by trustee). A bankrupt may litigate with his

trustee regarding his discharge without finding caution, *Scott v. Scott's Trustee*, 1914, S.C. 704, 51 S.L.R. 613; 1914, 1 S.L.T. 468.

(b) In an action for aliment, *Hepburn v. Tait*, 1874, 1 R. 875; 11 S.L.R. 502.

(c) In actions by persons in receipt of parochial relief, *Macdonald v. Simpson*, 1882, 9 R. 696; 19 S.L.R. 471; *Johnston v. Dryden*, 1890, 18 R. 191; 28 S.L.R. 141. But *contra*, *Hunter v. Clark*, *infra*; *Robertson v. Midlothian County Council*, *infra*; *M'Intosh v. Fraser*, *infra*.

Exceptions are admitted to the rule, and caution was ordered in the following cases:—

(a) Where a married woman without funds put forward a claim as a beneficiary on an estate without her husband's consent, *Teulon v. Seaton*, 1885, 12 R. 971; 22 S.L.R. 786. But otherwise in *Sleigh v. Yeaman*, 1900, 8 S.L.T. 114. By the Married Women's Property (Scotland) Act, 1920, a married woman is now in the same position as regards suing and being sued as if she were unmarried.

(b) When the wife of an undischarged bankrupt sued for damages for an assault alleged to have been committed four years previously, *Grant v. Grant*, 1899, 1 F. 701; 36 S.L.R. 517; 6 S.L.T. 389.

(c) Where a pursuer was in receipt of parochial relief, *Hunter v. Clark*, 1874, 1 R. 1154; 11 S.L.R. 672; followed in *Robertson v. Midlothian C. C.*, 1898, 25 R. 569; 35 S.L.R. 455; 5 S.L.T. 333; and in *M'Intosh v. Fraser*, 1901, 9 S.L.T. 117 ("legal poverty" as opposed to "poverty"); *M'Lean v. M'Laren*, 1910, 1 S.L.T. 29. But *contra*, *Macdonald v. Simpson*, *supra*; *Johnston v. Dryden*, *supra*.

(d) Where an applicant for the poor's roll was reported to have no *probabilis causa*, *Robertson v. Meikle*, 1890, 28 S.L.R. 18; cf. *Thomson v. N.B. Railway Co.*, 1882, 9 R. 1101; 19 S.L.R. 817; and *M'Crae v. Bryson*, 1922, S.L.T. 664.

(e) Where a person without means was put forward as a pursuer in place of the true *dominus litis*, *Jenkins v. Robertson*, 1869, 7 M. 739; 41 J. 386; *Robertson v. Duke of Atholl*, 1905, 8 F. 151; 42 S.L.R. 601; 13 S.L.T. 22, 215.

A claimant who had assigned his right to an agent in security of expenses was not required to find caution, *M'Cuaig v. M'Cuaig*, 1909, S.C. 355; 46 S.L.R. 287; 1 S.L.T. 60.

4. Registered Company Pursuer.—Under the Companies (Consolidation) Act, 1908, sec. 278, a limited company, being pursuer, may be required to find caution for costs,

“if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence.”

English Coasting, etc., Co. v. British Finance Co., 1886, 13 R. 430; 23 S.L.R. 289; *New Mining, etc., Co. v. Chalmers and Others*, 1909, S.C. 1390; 46 S.L.R. 1002; 2 S.L.T. 236; *Brownrigg Coal Co. Ltd. v. Sneddon*, 1911, S.C. 1064; 48 S.L.R. 881; 2 S.L.T. 96 (discretion of judge will not be readily interfered with).

This was held not to apply to a company who were respondents in an appeal from the Sheriff Court, *Star Fire, etc., Insurance Co. v. Davidson & Sons*, 1902, 4 F. 997; 39 S.L.R. 768; 10 S.L.T. 282. Nor to a company defending bringing a reclaiming note, *Sinclair v. Glasgow, etc., Contract Corporation*, 1904, 6 F. 818; 41 S.L.R. 608; 12 S.L.T. 175.

Southern Bowling Club v. Edinburgh Evening News, 1901, 9 S.L.T. 35 (as to what is meant by assets being insufficient under previous enactment).

5. Rule as to Defender.—A defender will not, as a rule, be required to sist a mandatory, or to find caution for expenses.

Weir v. Buchanan, 1876, 4 R. 8; 14 S.L.R. 18; *D’Ernesti v. D’Ernesti*, 1882, 9 R. 655; 19 S.L.R. 436 (action of divorce against husband resident abroad); *Buchanan v. Stevenson*, 1880, 8 R. 220; 18 S.L.R. 132; *Steven v. Fleming*, 1885, 22 S.L.R. 673 (reduction on ground of fraud); *Lawrie v. Pearson*, 1888, 16 R. 62; 26 S.L.R. 37 (accounting, defender under trust deed); *Walkingshaw v. Stewart*, 1891, 18 R. 491; 28 S.L.R. 363; *Bunten v. Aitkenhead*, 1892, 19 R. 803; 29 S.L.R. 659; *Florence v. Smith*, 1913, S.C. 393; 50 S.L.R. 267; 2 S.L.T. 451 (defender who had gone abroad); *Morton v. Smith*, 1902, 9 S.L.T. 396; *Drew v. Robertson*, 1903, 11 S.L.T. 67 (defender with interest in securing dividend to creditors); *Johnston v. Henderson*, 1906, 8 F. 689; 43 S.L.R. 486; 13 S.L.T. 944 (trust deed granted after adverse decision and defender reclaimed); *Mackay v. Boswall Preston*, 1916, S.C. 96; 53 S.L.R. 79; 1915, 2 S.L.T. 291.

But caution was ordered—

(a) Where a defender was practically pursuer, being a bankrupt litigating with his trustee regarding his estate, *Robb v. Dickson*, 1901, 9 S.L.T. 224 (question one of counter claim); *Jackson v. Lamont*, 1889, 17 R. 282; 27 S.L.R. 227. See also *MacBean v. West End Clothiers Co.*, 1918, S.C. 221; 55 S.L.R. 497.

(b) Where a defender was held to have no interest in the result of the case, *Smith's Trs. v. M'Cheyne*, 1879, 16 S.L.R. 592 (bankrupt defender having no interest in cause); *Stevenson v. Lee*, 1886, 13 R. 913; 23 S.L.R. 649 (defender granted trust deed during litigation).

(c) Where a defender in an action had gone abroad, he was ordained to sist a mandatory, *Bracken v. Blasquez*, 1891, 18 R. 819; 28 S.L.R. 632; *Young v. Carter*, 1906, 14 S.L.T. 411, 829; *Bank of Scotland v. Rorie*, 1908, 16 S.L.T. 130; *Dampskibsselskabet, etc. v. Blasquez*, 1908, 16 S.L.T. 221; *Holmes v. M'Murich*, 1920, S.C. 631; 57 S.L.R. 523; 1920, 2 S.L.T. 76; *Stewart v. Allison*, 1923, S.L.T. (Sh. Ct.) 18.

6. Procedure.—Where a mandatory is necessary the writ will proceed at his instance thus: “A. B. [*design him*] and C. D. [*design him*], his mandatory, Pursuers.”

If the action is not so raised the defender will state the plea “*ante omnia*, the pursuer ought to be ordained to sist a mandatory,” and move accordingly at the closing of the record; but the motion may be made earlier if desired. The motion for a mandatory or for caution should be made timeously.

A motion for caution made on the eve of a trial was refused as too late, *Simpson v. Allan*, 1894, 31 S.L.R. 572.

The Sheriff ordains the pursuer to sist within a specified time. A minute is lodged stating the mandatory's name and designation. A formal consent by the party proposed as mandatory may be asked for. If no objections are taken the Sheriff sists the party.

The mandatory should be a person of at least similar status to the pursuer.

It is no objection to a proposed mandatory that he resides in England, *Blow v. Ecuadorian Assn. Ltd.*, 1903, 5 F. 444; 40 S.L.R. 358; 10 S.L.T. 603.

A similar motion may be made if the pursuer goes abroad during the dependence of the action.

Similar procedure is adopted where it is desired that the pursuer should be ordained to find caution.

If the order to sist a mandatory or to find caution is not implemented, the opposite party may take decree.

In the case of the pursuer being the defaulter, as is usual, the decree is absolvitor, not dismissal, *Gray v. Ireland*, 1884, 11 R. 1104; 21 S.L.R. 766; *Teulon v. Seaton*, 1885, 12 R. 1179; 22 S.L.R. 786; *Train v. Little*, 1911, S.C. 736; 48 S.L.R. 619; 1 S.L.T. 345.

Where an action had been dismissed in respect of pursuer's failure to find caution, the Court refused in a subsequent action to hold the decree equivalent to absolvitor, *Cunningham v. Skinner*, 1902, 4 F. 1124; 39 S.L.R. 727; 10 S.L.T. 148.

In *Harvey v. Clark*, 1912, 28 Sh. Ct. Rep. 75, the Sheriff refused to sist the assignee of a pursuer on the ground that the latter had not implemented an order to sist a mandatory.

III. REFERENCE TO OATH

Reference to oath is competent in two classes of cases—

1. In actions in which the only competent evidence is the oath of a party.

2. In any action, either party may elect to rest his case upon the deposition or oath of his opponent.

The following points may be noted :—

(1) Only questions of fact can be referred.

It may be the whole cause or only part of a cause, *Sinclair v. M'Beath*, 1869, 7 M. 934; 41 J. 607; *Sawers v. Clark*, 1892, 19 R. 1090; 29 S.L.R. 738.

(2) Reference to oath is not competent in an irrelevant action.

Sawers v. Clark, supra.

(3) The record should be closed and any preliminary pleas first disposed of.

The reference may be at any stage thereafter. Reference is competent after decree has been issued, but before extract, *Aikman v. Aikman's Trs.*, 1868, 6 M. 277; 40 J. 146.

(4) The reference can only be to the oath of the opposing party.

Farquhar v. Farquhar, 1886, 13 R. 596; 23 S.L.R. 407 (beneficiary and not trustee); *Mitchells v. Moultrys*, 1882, 10 R. 378;

20 S.L.R. 263; *Scott v. Lapraik*, 1916, 32 Sh. Ct. Rep. 112 (husband and wife). *Bertram & Co. v. Stewart's Trs.*, 1874, 2 R. 255; 12 S.L.R. 156 (joint-reference, agent for party).

(5) Where one party has examined another as a witness in the cause, he cannot thereafter refer the matter to his oath.

Evidence (Scotland) Act, 1853, sec. 5 (16 Vict. cap. 20); *Macleay v. Campbell*, 1876, 3 R. 999; 13 S.L.R. 649; *Swanston v. Gallie*, 1870, 9 M. 208; 43 J. 93. But see *Dewar v. Pearson*, 1866, 4 M. 493; 38 J. 228.

(6) Reference to oath is not competent after referring a cause to a judicial referee.

M'Laren v. Shore, 1883, 10 R. 1067; 20 S.L.R. 721.

Procedure.—Reference to oath is initiated by minute signed by the party or his agent. Rule 64. An agent signing should have a special mandate. In the minute the party refers the question of fact which is in dispute to the oath of his opponent, and craves the authority of the Sheriff thereto.

The minute may be in the form given on p. 497.

If the reference is of part of the cause only, the facts or questions to be referred should either be stated shortly or referred to as contained in a particular condescendence or answer.

The minute of reference can be retracted by minute before the oath is taken. Permission to retract is in the discretion of the Sheriff, *Dick v. Hutton*, 1876, 3 R. 448; 13 S.L.R. 291.

If the Sheriff interpones authority, a diet is appointed for taking the oath. The deponent is examined by the referring party, and the Sheriff may put questions suggested by the opposite party.

The opposite party is not entitled to cross-examine, *Heslop v. Runcie*, 1894, 22 R. 83; 32 S.L.R. 66; 2 S.L.T. 305; *Cowie's Exrs. v. Paterson*, 1904, 7 F. (J.) 68; 42 S.L.R. 175; 12 S.L.T. 507.

The deposition is taken down by the Sheriff or a commissioner, or by a clerk or shorthand writer, in the same way as other evidence. Rules 65 and 66. After the oath is taken, no further proof is competent, it being final as to

the matter referred. Judgment is then given after considering the terms of the oath alone.

Documents may be made part of the oath by the party being examined thereon.

Jackson v. Cochrane, 1873, 11 M. 475; 45 J. 314; *Mitchells v. Moultrys*, 1882, 10 R. 378; 20 S.L.R. 263; *Newlands v. M'Kinley*, 1885, 13 R. 353; 23 S.L.R. 228; *Broatch v. Dodds*, 1892, 19 R. 855; 29 S.L.R. 763.

The deponent under a reference to oath is not a witness, and no question of credibility can be raised. The parties are heard solely on the construction of the terms of the oath, *i.e.* whether it is affirmative or negative of what has been referred, *Cowbrough v. Robertson*, 1879, 6 R. 1301; 16 S.L.R. 777; *Chrystal v. Chrystal*, 1900, 2 F. 373; 37 S.L.R. 278; 7 S.L.T. 319; *Thomson's Executor v. Thomson*, 1921, S.C. 109; 58 S.L.R. 107; 1921, 1 S.L.T. 41.

If a party fails to appear at the diet for taking his deposition, decree may be granted against him, as confessed. Rule 64.

IV. JUDICIAL REMIT

The following are the provisions of the rules of the Act of 1907 with regard to remits by the Sheriff:—

1. The Sheriff may remit to any person of skill or other person to report on any matter of fact. Rule 60.

2. When such remit is made of consent of both parties, the report is final and conclusive with respect to the matter of the remit. Rule 60.

While these rules are expressed in unlimited terms, it is thought that the intention is not to alter, but merely to adopt, the existing law and practice in regard to judicial remits.

As to competency of an action, having for its object the granting of a remit to a man of skill, with the view to further proceedings, see *Kilmarnock Magistrates v. Reid*, 1897, 24 R. 388; 34 S.L.R. 286; 4 S.L.T. 279; *Sutherland v. Squair*, 1898, 25 R. 656; 35 S.L.R. 512; 5 S.L.T. 336.

There are the following classes of remit:—

1. Remit to perform certain work, which it would be practically impossible for the judge to do personally.

The most familiar illustration of this is in the remit to the Auditor for the taxation of accounts of expenses. Other examples are in the case of adjustment of the terms of a draft deed which the Court has ordered a party to execute, and remits in various petitions to the Accountant of Court to report. In such cases the party to whom the remit is made acts practically as the delegate of the judge, who has power to review, alter, reject, or approve of what has been done, and whose authority is necessary to give effect to the report.

2. Remit to ascertain the correctness of facts in various applications.

This is the usual way in which the Court ascertains in non-contentious business whether the facts stated in applications are correct. This method of procedure is more frequently met with in the Court of Session than in the Sheriff Court, *C. B. v. A. B.*, 1891, 18 R. (H.L.) 40; 28 S.L.R. 917 (appointment of *curator bonis*); *Bankes v. Anderson*, 1899, 1 F. 1194; 36 S.L.R. 936; 7 S.L.T. 146 (entail petition); *Stewart v. Stewart*, 1886, 13 R. 1052; 23 S.L.R. 773 (question between husband and wife as to aliment and custody of children).

Applications under the Heritable Securities Act, 1894, are suitable cases for such remits.

3. Remit in place of a proof by witnesses.

In an ordinary litigation the use of a remit is more limited, and its sphere is not capable of being very clearly defined. A remit may have different results according to the object in view, *e.g.*:—

(a) A remit may be made by the Court solely for the purpose of obtaining information for the Court.

A judge is entitled at any stage to remit to a man of skill, or to a scientific person, to report on the state of a subject in dispute in order to enable him to dispose of the matter; but this is a power to be rarely exercised unless by consent of parties. This course might be appropriate in interdicts and cases requiring preservative measures, *Nisbet v. Mitchell Innes*, 1880, 7 R. 575; 17 S.L.R. 438; *Leonard v. Lindsay, etc.*, 1886, 13 R. 958; 23 S.L.R. 657 (as to effect of reports under such remits).

(b) A remit may be made on the motion, or with the consent, of both parties with a view to the ascertainment

of the facts, instead of their leading evidence in the ordinary way.

The fundamental principle is that a litigant is entitled to prove his averments in the ordinary way, *i.e.* by witnesses, and is not bound to accept the judgment of either a reporter or a referee, *Pearce Brothers v. Irons*, 1869, 7 M. 571; *Quinn v. Gardner & Sons*, 1888, 15 R. 776; 25 S.L.R. 577 (question whether work within contract or not, and as to amount due); *Steel v. Steel*, 1898, 25 R. 715; 35 S.L.R. 549; 5 S.L.T. 376 (a remit as to condition of march fence held not to exclude proof); *Broxburn Oil Company v. Morrison*, 1903, 5 F. 694; 40 S.L.R. 468; 10 S.L.T. 728 (questions as to deductions to be made from poor-rates in respect of repairs); *Macdonald v. Cameron, etc.*, 1882, 10 R. 172; *Thom v. Macbeth*, 1875, 3 R. 161; 13 S.L.R. 94 (action of division and sale).

Where, under a contract, work was to be done to the satisfaction of a person named, a remit to him was held to supersede proof, *Barclay v. Bruce's Trs.*, 1904, 12 S.L.T. 100. See also *Dykes v. Allanshaw Coal Company*, 1894, 1 S.L.T. 530.

(c) A remit may be made to an accountant in actions of count and reckoning and similar cases.

Such a remit occupies a fairly well defined position. A report under such a remit brings the accounts in proper form before the parties and the Court, so that the law can be applied. Such a report is not exclusive of proof. If necessary, proof can be led upon objections to the report. Remit to an accountant is a matter of daily practice in the Court of Session, and the Court of Session Act of 1868 (sec. 81 *et seq.*) makes special provision for carrying out this method of inquiry. While there are no corresponding enactments applicable to the Sheriff Court, there can be no doubt that procedure on similar lines is competent.

(d) In certain cases, such as questions of river pollution, nuisance, or execution of works, after the facts have been ascertained by means of proof and the rights of parties settled, it is a usual and proper procedure to remit to a skilled person to suggest remedial measures, or to see them carried out.

E. of Kintore v. Pirie & Sons, Ltd., 1906, 7 F. 1058; 42 S.L.R. 607; 13 S.L.T. 131; 8 F. (H.L.) 16; 43 S.L.R. 838; 14 S.L.T. 215; *M'Ewen v. Steedman & M'Alister*, 1913, S.C. 761; 50 S.L.R. 505; 1913, 1 S.L.T. 298.

Procedure in Remit.—There are no special rules on this subject. The reporter has to act with fairness to both parties.

M'Farlane & Gibb v. Strachan, 1884, 12 R. 114; 22 S.L.R. 83; *N.B. Railway Co. v. Wilson*, 1911, S.C. 730; 48 S.L.R. 620; 1 S.L.T. 327. As to the functions of a reporter, see *Marshall v. Callander, etc., Hydropathic Co.*, 1897, 24 R. 712; 34 S.L.R. 530; 4 S.L.T. 349.

Expenses of Remit.—The agents are, apart from agreement, not personally liable for the reporter's fees. C.A.S., M, ii., 13.

The expense falls in the first instance on the party moving for a remit. If the remit be made on joint motion or by the Sheriff *ex proprio motu*, the expense falls in the first instance on the parties equally, unless the Sheriff orders otherwise. Rule 60.

The parties are liable jointly and severally, and one paying the whole can recover the half from his opponent, subject always to the finding of the Court as to expenses. The reporter may ask decree in the process, *Ballantine v. Reddie*, 1884, 22 S.L.R. 136; *Dodd v. Hilson*, 1874, 1 R. 527 (defender held liable in expense of remit to ascertain whether pollution remedied).

V. JUDICIAL REFERENCE

This is a matter entirely between the parties alone, and so does not come within the purview of any enactments, and it is not referred to in the Act of 1907.

In a judicial reference the case is withdrawn from the decision of the Court, and left to be decided by an arbiter. The consent of both parties is required, and should be contained in a minute, to which the authority of the Court is interponed, and an interlocutor thereon is pronounced referring the cause. The minute should be signed by the parties themselves, or special authority should be granted to their agents to do so. The reference may be of the whole cause or of any defined part of it, and of questions of law as well as of fact.

A judicial reference may be entered into at any stage of the case. It constitutes a contract between the parties to substitute the arbiter for the Court, *Walker v. Stewart*, 1855, 2 Macq. 424; *Brown's Trs. v. Horne*, 1907, S.C. 1027; 44 S.L.R. 795; 15 S.L.T. 145.

After remit to the referee the case is conducted before him in the same way as arbitration proceedings, the procedure being largely within his discretion. The judicial referee's decision is embodied in a report to the Court, which may be submitted to the parties for consideration and objections before being lodged in the process. The decision of the referee is final upon the matters remitted by the parties to him, and the Court must adopt his decision and pronounce decree in terms of his report.

A form of minute of reference is given on p. 498.

The report may, however, be sent back to the referee for correction if it does not exhaust the remit, or is on the face of it incomplete or ambiguous or is manifestly defective, but it cannot be altered or reviewed by the Court.

Further, such objections as would form relevant ground for reducing an arbiter's award may be stated against the report of the judicial referee without an action of reduction being raised, *e.g.* bribery, corruption, serious irregularity, flagrant miscarriage of justice amounting to oppression.

Mackenzie v. Girvan, 1840, 3 D. 318; *Wilton v. Walkers*, 1857, 5 M. 969; *Rogerson v. Rogerson*, 1885, 12 R. 583; 22 S.L.R. 376; *Edinburgh Water Trust v. Clippens Oil Co.*, 1902, 4 F. (H.L.) 40; 39 S.L.R. 860; 10 S.L.T. 240; *Pollich v. Heatley*, 1910, S.C. 469; 47 S.L.R. 402; 1 S.L.T. 203.

The process continues to depend before the Court notwithstanding the reference, for the purpose of obtaining warrant to cite witnesses and similar incidental orders; and it is thought that the proceedings fall asleep unless an order is timeously pronounced in the reference, *i.e.* within year and day.

Watson v. Stewart, 1872, 10 M. 494; 44 J. 269.

As to amendment of record after case referred, see *Brown's Trs. v. Horne*, *supra*.

Expenses will be dealt with by the referee, and the Court will fix and decern for the fees of the referee and clerk, who may obtain decree in their own names.

Henderson v. Paul, 1867, 5 M. 613, 628.

See as to effect of delivery of referee's report, *Macrae v. Edinburgh Street Tramway Co.*, 1885, 13 R. 265; 23 S.L.R. 185; *Scott v. Scott & Watson*, 1898, 5 S.L.T. 294.

The interlocutor disposing of the case may be appealed like any other final interlocutor, unless the parties have agreed to make the judge also final, *Lindsay v. Walker's Trs.*, 1877, 4 R. 870; 14 S.L.R. 560.

VI. ABANDONMENT OF ACTION

At any stage before an interlocutor of absolvitor or dismissal is pronounced, the pursuer may offer to abandon the action by lodging a minute to that effect signed by himself or his agent. Rule 81.

An agent requires express authority to abandon. Form of minute is given on p. 497.

A defender may withdraw his defences with leave of the Court, *Paterson v. St. Andrews Mags.*, 1880, 7 R. 712; 17 S.L.R. 225; *Ower v. Crichton*, 1902, 10 S.L.T. 279.

Upon a minute being lodged, an interlocutor will be pronounced remitting the defender's account of expenses to the Auditor. Upon expenses being paid, the Sheriff may dismiss the action. Rule 81.

Payment of expenses is an absolute condition, *Scott v. Thurso River Harbour Trustees*, 1895, 23 R. 268; 33 S.L.R. 202; 3 S.L.T. 185; *Aird v. Tarbert School Board*, 1907, S.C. 22; 44 S.L.R. 223; 14 S.L.T. 595.

If the pursuer fails, within fourteen days of the date of taxation, to pay the defender's expenses, the defender is entitled to absolvitor, with expenses. Rule 81.

The effect of abandonment is that the pursuer may bring a new action if otherwise competent. Rule 81.

See generally as to conditions of abandoning, *Lee v. Pollock's*

Trs., 1906, 8 F. 857; 43 S.L.R. 657; 14 S.L.T. 115 and 554; *Stewart v. Stewart*, 1906, 8 F. 769; 43 S.L.R. 522; 13 S.L.T. 997.

Previous findings as to expenses are not affected by an abandonment of the action, *Nobel's Explosives Co. v. British Dominions, etc., Insurance Co.*, 1919, S.C. 455; 56 S.L.R. 298; 1919, 1 S.L.T. 225.

It is difficult to interpret the phrase "offer to abandon," which is a new expression. It is thought that a pursuer has a right to abandon, on payment of expenses, and that neither the defender nor the Court would be entitled to insist on a pursuer proceeding when he wished to abandon. The abandonment is not effectual until expenses are paid, when an interlocutor is pronounced holding the cause as abandoned, or dismissing it. There seems no reason why, if the expenses are not paid, decree should not be granted therefor as already taxed, but a different view has been expressed in *Buchanan v. French & Watson*, 1910, 26 Sh. Ct. Rep. 246.

A minute of abandonment may presumably still be withdrawn, previous to the interlocutor sustaining it, upon conditions as to expenses, *Todd v. Glasgow Corpn.*, 1879, 16 S.L.R. 718; *Dalgleish v. Mitchell*, 1886, 23 S.L.R. 552; *Lee v. Pollock's Trs.*, 1906, 8 F. 857; 43 S.L.R. 522; 13 S.L.T. 997.

As to abandonment before the case was enrolled under the former procedure, see *Roxburgh v. Commercial Bank*, 1903, 19 Sh. Ct. Rep. 248.

Where an action in which a counter claim had been pleaded was abandoned, it was held that the defender was not thereby entitled to insist in the action with the object of obtaining decree for the counter claim, *Craw v. Malcolm*, 1908, 24 Sh. Ct. Rep. 268.

VII. WAKENING OF PROCESS

Where no interlocutor has been pronounced in a case for a period of year and day, the process falls asleep. Rule 101. The cause cannot then be proceeded with until it is wakened.

The sist of procedure in an action would apparently not keep it from falling asleep, *American Mortgage Co. v. Sidway*, 1907, 44 S.L.R. 170; 14 S.L.T. 521.

Where an action is served, no appearance is entered, and no enrolment is made for a period of a year and day after the date when appearance is due, the instance falls and the action cannot be wakened, *M'Kidd v. Manson*, 1882, 9 R. 790; 19 S.L.R. 603. The opinion has been expressed that where a cause has not been tabled in terms of Rule 34 *et seq.*, it thereupon falls and cannot

be awakened, *Robb & Crosbie v. Forbes*, 1911, 27 Sh. Ct. Rep. 162; *Barr v. Wallace*, 1913, 29 Sh. Ct. Rep. 171 (action awakened after sixty years).

A cause may be wakened—

1. By the parties or their agents subscribing a minute on the interlocutor sheet consenting to the cause being wakened. Rule 102.

2. By the party desiring to move lodging a minute craving a wakening of the cause, which minute the Sheriff may direct to be intimated to the other parties or their agents, and to be published in such manner as he shall direct. Rule 103. On a certificate of the intimation and publication being lodged, the Sheriff if satisfied pronounces an interlocutor wakening the cause, which may then be proceeded with. Rule 103.

Forms of minutes are given on p. 498.

VIII. COMPROMISE OF ACTION

Instead of taking a decision in a cause, the parties may end the litigation by compromise. This may be effected in two ways, viz. :—

1. Judicial Tender.—The defender may lodge a minute of tender, which the pursuer may accept by minute. The Sheriff interpones authority and grants decree in terms thereof.

Forms of minutes are given on p. 499.

A minute of tender may be withdrawn at any time before acceptance.

A material change of circumstances may make a tender no longer binding.

Macrae v. Edinburgh Street Tramway Co., 1885, 13 R. 265; 23 S.L.R. 185. As to effect of tender on questions of expenses, see p. 260.

2. Extra-judicial Settlement.—The parties may settle the cause out of Court. In this event the terms of settle-

ment may be embodied in a joint-minute, in accordance with which, decree, in the terms agreed on by the parties, will be pronounced; or otherwise the joint-minute may simply crave that the action be dismissed.

An agent requires express authority to compromise, *Hendry's Trustees v. Hendry*, 1916, 53 S.L.R. 757; 1916, 2 S.L.T. 135.

The following points as to compromise of an action may be noted :—

(1) The authority of the Court is not necessary to effect a binding settlement of an action.

Where a defender lodged a receipt in process before the closing of the record and the pursuer repudiated the settlement, the Court held that the Sheriff had rightly allowed a proof of the averments as to the receipt, *Gow v. Henry*, 1899, 2 F. 48; 37 S.L.R. 40; 7 S.L.T. 203. When a joint minute has been signed, one of the parties is not entitled to withdraw, *M'Athey v. Patriotic Investment Society Ltd.*, 1910, S.C. 584; 47 S.L.R. 314; 1 S.L.T. 121.

(2) A case may be settled although the parties are at variance as to the effect of the settlement.

Christie v. Fife Coal Co., 1899, 2 F. 192; 37 S.L.R. 134; 7 S.L.T. 250; *Anderson v. Dick*, 1901, 4 F. 68; 39 S.L.R. 42; 9 S.L.T. 225.

An extra-judicial settlement was held binding though made after a minute of tender had been lodged of which the pursuer was in ignorance, *Welsh v. Cousin*, 1899, 2 F. 277; 37 S.L.R. 199. See also *M'Laughlin v. Pumpherston Oil Co.*, 1915, S.C. 65; 52 S.L.R. 48; 1914, 2 S.L.T. 306.

Settlement with one of several defenders who are called conjunctly and severally, or severally, does not liberate the others, *Douglas v. Hogarth*, 1901, 4 F. 148; 39 S.L.R. 118; 9 S.L.T. 254; *Mackenzie v. Macallister*, 1909, S.C. 367; 46 S.L.R. 288; 1 S.L.T. 62.

As to proof of terms of settlement, see *M'Adam v. Scott*, 1913, 50 S.L.R. 264; 1 S.L.T. 12.

IX. THE POOR'S ROLL

Where parties are unable from poverty to pursue or defend an action, the Sheriff may admit such parties to the benefit of the poor's roll, if, upon the report of the

procurators for the poor, he is satisfied that such person is entitled thereto. Act, sec. 51.

1. Admission to Poor's Roll.— A party desiring admission to the poor's roll obtains a certificate by the inspector or assistant inspector of poor of the parish or district where he or she resides, bearing that the applicant is unable through poverty to pay for the conduct of legal proceedings. Rule 162. On this being lodged with an application craving admission, the Sheriff remits to the procurators of the poor, who notify the parties, and after inquiry, report whether the applicant has a probable cause of action and is entitled to the benefits of the poor's roll. If their report is affirmative, the Sheriff admits the applicant, and appoints one of the agents to take charge of the case. Rules 163 and 164. Such agent conducts the case to its final issue. Rule 165. It is in the power of the Sheriff at any time to deprive any litigant of the benefit of the poor's roll. Rule 169.

The agent for the applicant should not act as a reporter, *M'Kean v. Herbison*, 1913, S.C. 548; 50 S.L.R. 350; 1 S.L.T. 144.

As to duties of agent for the poor to call for precognitions, see *M'Gregor v. Kinloch*, 1914, 30 Sh. Ct. Rep. 282.

2. Appointment of Agents for the Poor.— The Sheriff annually makes an order appointing the agents enrolled in his Court (or, where the county is divided into districts having separate local Courts, the agents enrolled in the district Courts) to meet to nominate a specified number of agents for the poor. Rule 152, as amended by Act of 1913. Notice of the order is to be given by a copy thereof being affixed on the walls of the Court-houses and Sheriff-Clerk's offices in the county or district. Rule 153, as amended by Act of 1913.

At the meeting, the agents present, by a majority of votes, nominate the required number of agents, and cause the nominations to be reported to the Sheriff. Rule 154.

The Sheriff may confirm the nominations in whole or in part, or he may decline to do so. Rule 155.

Six days before the list is submitted to the Sheriff the Sheriff-Clerk is to notify each agent who has been nominated; and such agent may, before the nominations are confirmed, represent to the Sheriff any reason why his nomination should not be confirmed. Rule 156.

In the event of the agents failing to nominate as above, or of the Sheriff not confirming the nomination, the Sheriff may himself make the requisite nomination, or may appoint another meeting to be held. Rule 157.

As to objections to appointment, see *Frew*, 1922 S.L.T. (Sh. Ct. Rep.) 140.

3. Duties.— The agents nominated are to act as agents for the poor in the county, or the district in which they are appointed, for one year, but are eligible for re-nomination. Rule 158, as amended by Act of 1913.

The agents so nominated, as they themselves arrange or as the Sheriff shall direct, are to act as procurators for the poor in all causes, civil and criminal, including attendance at the Circuit Court. Rule 159.

The agents for the poor in their respective districts are to assist each other by taking precognitions or proofs on commission, or otherwise as may be requisite and reasonable. Rule 160.

4. Liabilities as regards Expenses.— Unless expenses are awarded against and recovered from the opposite party, the agent has no claim for fees; but the litigant is liable to him for actual outlays incurred with the litigant's sanction. Rule 166.

Dickson v. Taylor, 1914, 30 Sh. Ct. Rep. 338 (liability of party for haver's fees).

The agent is not liable for witnesses' fees, shorthand writers' fees, or Court dues unless they are recovered by

the agent personally. Rule 167. See also as to liability of agent for the poor, C.A.S., M, ii., 14; Appendix, p. 394.

Neither the agent nor the litigant is liable for dues of Court or officers' fees, unless these are awarded against and recovered from the opposite party, in which case the litigant, or the agent if he personally recovers the same, is liable. Rule 168. Within six months after the close of his year of office, the agent has to prepare a list of the poor cases in which he acted, showing the amount recovered by him or his clients. The list is to be signed and sent to the Sheriff-Clerk, with a remittance for the amount of fees, and from time to time he has to remit any further fees recovered by him. Act of Sederunt, 22nd February, 1922, sec. 6; Appendix, p. 425.

CHAPTER XIII.

EXECUTION UPON DECREE

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THE proceedings upon a decree for a sum of money, in order to enforce or operate payment from the debtor, may be directed against—

1. His heritable estate;—inhibition and adjudication.
2. His moveable estate;—poinding; or arrestment and furthcoming.
3. His person;—imprisonment.

I. EXTRACT OF DECREE

Before proceedings can be taken to enforce any decree, it is necessary that the party wishing to enforce it should obtain an extract thereof. The extract contains the date of the decree, the names of parties to the action, and the terms of the decree, and concludes with a warrant for execution thereupon. It is signed by the Sheriff-Clerk on each page, and is dated.

The warrant states the *induciæ* of the charge, and embodies an express authority—(a) to arrest the moveable effects; (b) to charge the debtor to pay under the pain of poinding, and, when competent, of imprisonment.

The forms of extracts are regulated by the Sheriff Courts (Scotland) Extracts Act, 1892, 55 & 56 Vict. c. 17, but reference may also be necessary to the Debtors (Scotland) Act, 1838, 1 & 2 Vict. c. 114, sec. 9, and Codifying Act of Sederunt, B, vi., 2.

As to obtaining certificate of a Sheriff Court decree for execution in England or Ireland, and execution in Scotland on decrees of English and Irish Courts, see *Inferior Courts Judgments Extension Act, 1882*, 45 & 46 Vict. c. 31, and *Codifying Act of Sederunt, L*, ix. The provisions of the *Administration of Justice Act, 1920* (10 & 12 Geo. v. c. 81), which extend the principle of these *Judgments Extension Acts*, apply only to judgments of the Superior Courts.

Where an interlocutor ordering consignment did not specify the time for implement, but the extract stated the time as seven free days, a charge in terms thereof was sustained, *M'Lintock v. Prinzen and Others*, 1902, 4 F. 948; 39 S.L.R. 760; 10 S.L.T. 157. See also *Hardie v. Brown, etc.*, 1907, 15 S.L.T. 539.

A charge under the pain of imprisonment is only competent in the case of a decree for Crown taxes or for rates and assessments, or a decree *ad factum præstandum*. In the case of an alimentary decree it is not competent, *Whiteford v. Gibson*, 1899, 7 S.L.T. 233; *Torbet v. Morrison*, 1902, 18 Sh. Ct. Rep. 183; *Shanks v. Shanks*, 1911, 27 Sh. Ct. Rep. 57.

Extract of a decree, interlocutor, or order, in any cause other than a summary cause (rule 85), and other than a decree in absence (rule 24), and a decree for expenses (rule 98), if not appealed against, may be issued on the expiry of fourteen days from its date, or at such earlier date as the Sheriff shall allow extract. Rule 85.

Extract of a decree in a summary cause may be issued after the lapse of seven days, if not appealed against. Rule 85.

Extract of a decree in absence may be issued after the expiry of seven days. Rule 24.

Extract of a decree for expenses may be issued after the lapse of seven days, unless otherwise directed by the Sheriff. Rule 98.

Interest on sums decerned for when not expressly dealt with in the judgment will run from the date of the decree, *Wallace v. Henderson*, 1876, 4 R. 264; 14 S.L.R. 181. The rate, unless otherwise stated, is 5 per centum per annum. *Sheriff Courts (Scotland) Extracts Act, 1892*, sec. 9.

It is not necessary in order that it be extracted that the decree contain the word "decerns." *Sheriff Courts (Scotland) Extracts Act, 1892*, sec. 4.

Allowance of extract upon caution being found does not

shorten the time of extracting, but only adds a condition, *Simpson v. Jack*, 1888, 16 R. 131; 26 S.L.R. 76.

It was held competent for a pursuer, after extracting a decree for the principal sum, to obtain decree for expenses and extract thereof, *Mackintosh v. Young*, 1886, 23 S.L.R. 634; *Tennents v. Romanes*, 1881, 8 R. 824; 18 S.L.R. 583. But see *Baillie v. Cameron*, 1891, 28 S.L.R. 895. This power seems to be recognised in the Act of 1907, which, in rule 85, dealing with the time of extracting, refers to "any decree."

A decree for expenses includes decree for the expense of extracting it. Rule 98, and Sheriff Courts (Scotland) Extracts Act (general directions).

Rutherglen P. C. v. Glenbucket P. C., 1896, 33 S.L.R. 368; 3 S.L.T. 251; *Orr v. Smith*, 1891, 28 S.L.R. 589. See also *Williams v. Carmichael*, 1874, 11 S.L.R. 530.

II. INHIBITION

Inhibition may be used in respect of any debt sued for in the Sheriff Court by virtue of letters of inhibition under the signet. These are obtained by production of the decree (or the initial writ, when inhibition on the dependence is sought) in the Bill Chamber, when a fiat is granted thereupon, in respect of which letters of inhibition may be signeted. A notice of the inhibition may be placed on the Register of Inhibitions, in which event the inhibition takes effect from the date of the notice, provided the execution of the inhibition be recorded within twenty-one days thereafter.

Titles to Land Consolidation (Scotland) Act, 1868, secs. 155 and 156, and Codifying Act of Sederunt, C, iii. An inhibition is made effectual by an action of adjudication.

A copy of the writ certified by the clerk to the process may be produced instead of the principal writ. C.A.S., E, iii., 2.

III. ADJUDICATION

Adjudication may be obtained by raising an action in the Court of Session founding upon the decree obtained in the Sheriff Court, either without inhibition being first used, or after the use of inhibition.

IV. CHARGE

Diligence against moveable estate is regulated by the Debtors (Scotland) Act, 1838, better known as the Personal Diligence Act, and the Sheriff Courts (Scotland) Extracts Act, 1892, and also in some particulars by the Sheriff Courts Act of 1907.

A charge is essential previous to pointing or imprisonment. By virtue of the warrant contained in the decree, a charge is given by an officer of Court and an execution is returned.

Registration of the extract and the execution of charge, in the Sheriff Court Register of Hornings, accumulates the debt and interest into a capital sum. Debtors (Scotland) Act, 1838, sec. 10.

The Sheriff Courts Act of 1876, sec. 8, now repealed, enacted that the *induciæ* of charge were to be seven days, excepting in cases in which by law prior to that Act a shorter period was competent. The Act of 1907 does not re-enact this provision, and the *induciæ* is regulated by the Sheriff Courts (Scotland) Extracts Act, 1892, which provides for a charge of seven days. If the charge is to be executed out of the county, a warrant of concurrence must be endorsed on the extract by the Sheriff-Clerk of the county where it is to be used.

Debtors (Scotland) Act, 1838, sec. 13. Form of minute for warrant of concurrence is given on p. 499.

Sheriff Courts (Scotland) Extracts Act, 1892, sec. 7 (6).

Brydon v. Atkinson, 1893, 1 S.L.T. 261.

Rule 10 of the Act of 1907, as to executing warrants without endorsement, does not apply to a charge.

The charge is executed by an officer of Court in presence of a witness.

A charge may be executed edictally on fourteen days' *induciæ*. Rule 15. If the party charged edictally has a known residence or place of business in England or Ireland, a copy of the decree and charge on fourteen days' *induciæ* has to be posted to him in a registered letter at such address; and the execution has to bear that this has been done. Rule 15.

A charge upon an individual carrying on business under a firm name and upon a company is dealt with by rule 151 of the Act of 1907, as altered by the Act of 1913. The altered rule is as follows:—"It shall be competent to charge any corporation or association, or any individual or individuals carrying on business under a firm or trading or descriptive name, under such name at the principal place where such business is carried on (including in the case of a corporation or association the place of business or office of their clerk or secretary), or where such principal place of business is furth of Scotland, at any place of business in Scotland at which such business is carried on."

A decree against an unincorporated society is not a warrant for a charge against an individual not named in the decree, but said to be a member of the society, *Aitchison v. M'Donald*, 1911, S.C. 174; 48 S.L.R. 185; 1910, 2 S.L.T. 413.

A charge, except to a limited extent upon a Small Debt decree, does not fall under the provisions of the Citation Amendment Act, 1882, and so cannot be served by post.

Gow & Son v. Thomson, 1895, 1 Adam, 534. The provision of the Act, sec. 49, as to postal charge only applies to a charge on a small debt decree. The Court of Session refused to authorise postal service of a charge in *Whyte, Ridsdale & Co.*, 1912, S.C. 1095; 49 S.L.R. 872; 2 S.L.T. 73.

The charge must be in conformity with the extract. It must specify the parties to the action, date of the decree, the *inducia* of the charge, and payments to account, if any, and must state the method of execution. It must also be dated, and signed by the officer.

An error in the charge may be remedied by withdrawal of the charge and the service of a new charge, *Clark v. Hamilton & Lee*, 1875, 3 R. 166; 13 S.L.R. 95.

See also as to errors in charge, *Henderson v. Rollo*, 1871, 10 M. 104; 44 J. 73; *Anderton v. Law*, 1911, 27 Sh. Ct. Rep. 87.

A charge in which the name of the payee was blank was suspended, *Hardie v. Brown, etc.*, 1907, 15 S.L.T. 539. Likewise where the name of the officer charging was omitted, *Paterson v. Scottish Insur. Comrs.*, 1915, 2 S.L.T. 178.

An assignee or other party acquiring right to an extract may do diligence thereon after first endorsing thereon a minute craving authority and producing evidence of his

right, upon which the Clerk of Court issuing the extract writes a fiat. Debtors (Scotland) Act, 1838, sec. 12.

A form of minute will be found on p. 500.

V. POINDING AND SALE

Moveable effects, in the hands of a debtor who has failed to obey the charge given, are made available for payment by means of poinding.

Lochhead v. Graham, 1883, 11 R. 201; 21 S.L.R. 144 (debtor's goods in creditor's possession).

The proceedings are regulated by the Debtors (Scotland) Act, 1838, sec. 23 *et seq.*

1. A poinding may take place at any time after a charge has expired. The officer, with two sworn valuers, appraises the goods, and offers them to the debtor at the appraised value; if they are not bought back, they are left where poinded, along with a schedule of poinding. Act of 1838, sec. 24.

The extract implies warrant to open shut and lockfast places. Sheriff Courts (Scotland) Extracts Act, 1892, sec. 7 (1).

The effects must be separately entered and valued, *Le Conte v. Douglas*, 1880, 8 R. 175; 18 S.L.R. 163.

2. A report of the poinding is made to the Sheriff within eight days. The report contains the amount of debt, names and designations of debtor, creditor, and valuers, and the effects and their value; and also bears that the schedule was delivered to the person with whom the goods were left. It is signed by the officer and valuers. Act of 1838, sec. 25.

3. If poinded effects are unlawfully intromitted with or carried away, a summary complaint may be presented to have them restored, and the wrongdoer may be imprisoned till restoration or payment of double the appraised value. Act of 1838, sec. 30.

Proceedings for breach of poinding are civil, and do not require the concurrence of the Procurator-Fiscal, *Wilson v. McKellar*, 1896, 24 R. 254, 34 S.L.R. 208; 4 S.L.T. 197; *A. & B. v. Allan*, 1911, 27 Sh. Ct. Rep. 139.

4. A warrant of sale may be granted by the Sheriff, who fixes the time and place for the sale to be carried out. The time must be not less than eight nor more than twenty days after notice to the debtor. Act of 1838, sec. 26.

An arrestment of the effects is not a good reason for refusing warrant of sale, *Ferguson v. Bothwell*, 1882, 9 R. 687; 19 S.L.R. 465; nor was the dependence of an application by the debtor for cessio held a bar under the former law, *Simpson v. Jack*, 1888, 16 R. 131; 26 S.L.R. 76.

Copy of the warrant of sale is served on the debtor and also upon the person who has the effects, if other than the debtor. Act of 1838, sec. 26.

The service may be made by registered letter, *Lochhead v. Graham*, 1883, 11 R. 201; 21 S.L.R. 144.

5. If the goods are not sold at the appraised value, they are delivered to the creditor. Act of 1838, sec. 27. A report of the sale or delivery is made to the Sheriff within eight days thereafter, the roup-roll and account of the proceeds of the sale and the expenses being lodged therewith. The Sheriff may order the proceeds to be consigned, or payment to be made to the creditor, subject to the ranking of other creditors. Act of 1838, sec. 28.

6. Any creditor who has a warrant to poind, may, before the poinding has been completed, be conjoined with the poinding creditor. Act of 1838, sec. 23. Claims upon the consigned fund may be lodged, and the rights of parties determined, as in a multiplepoinding.

A third party claiming goods included in a poinding may lodge objections to the warrant of sale being granted, or may apply for interdict, *Lindsay v. E. of Wemyss*, 1872, 10 M. 708; *Ross v. Sinclair*, 1904, 20 Sh. Ct. Rep. 317; *Lamb v. Wood*, 1904, 6 F. 1091; 41 S.L.R. 825; 12 S.L.T. 272; *Jack v. Waddell's Trs.*, 1918, S.C. 73; 55 S.L.R. 75; 1917, 2 S.L.T. 235.

VI. ARRESTMENT AND FURTHCOMING

By virtue of the warrant in the decree, debts or moveables belonging to the debtor, and due by, or in the hands

of, third parties, may be arrested. A charge is not a necessary preliminary to arrestment. If the arrestment is not served personally a copy of the schedule must be sent by postal registered letter to the last known place of abode of the arrestee. If such place of abode is unknown, or if the arrestee is a firm or corporation, it must be sent to the arrestee's principal place of business if known, or if not known, to any known place of business of the arrestee. The execution has to state that this has been done and to specify the address. Rule 126.

An arrestment used in the hands of a municipal corporation is validly executed by being delivered to a servant of the corporation within the City Chambers, *Campbell v. Watson's Tr.*, 1898, 25 R. 690; 35 S.L.R. 508; 5 S.L.T. 334.

The Citation Amendment Act, 1882, does not apply to the execution of arrestment.

An arrestment can be executed out of the jurisdiction of the Sheriff issuing the warrant, upon being endorsed by the Sheriff-Clerk of the county where it is to be executed. Rule 10 of the Act of 1907 does not appear to apply to the case of arrestment on a decree.

The schedule of arrestment, which must specify the extract decree by reference to the parties and dates, states the amount which is arrested, and may particularise the fund or other moveable property attached.

An error in specifying the date of the decree was held fatal, *Graham v. Bell*, 1875, 2 R. 972. The arrestment must state that the effects are the property of the debtor, *Marshall v. Robertson*, 1905, 21 Sh. Ct. Rep. 243.

An arrestment which did not set forth the character of the arrestee as in the decree was held bad, *Gibb v. Lee*, 1908, 45 S.L.R. 833; 16 S.L.T. 260.

Arrestments prescribe in three years. Debtors (Scotland) Act, 1838, sec. 22.

Jameson v. Sharp, 1887, 14 R. 643; 24 S.L.R. 453.

An arrestment is made effectual by means of an action of furthcoming, or, if there are competing claims upon the arrested funds, by an action of multiplepounding.

VII. IMPRISONMENT

The nature of the debt must be stated in the extract, in cases in which imprisonment is competent. Sheriff Courts (Scotland) Extracts Act, 1892 (general directions). Imprisonment of the debtor is competent in the following cases only :—

1. For payment of taxes, fines, or penalties due to His Majesty. In this case imprisonment is not competent for a longer period than twelve months. Debtors (Scotland) Act, 1880, sec. 4.

2. For payment of rates and assessments lawfully imposed, but the imprisonment must not be for a longer period than six weeks for the rates and assessments of any one year. Debtors (Scotland) Act, 1880, sec. 4; Civil Imprisonment (Scotland) Act, 1882, sec. 5.

3. For implement of a decree *ad factum præstandum*.

In each of the cases above mentioned, a warrant of imprisonment may be obtained after registration of the execution of charge, by minute upon the decree in the form of Schedule No. 8 annexed to the Debtors (Scotland) Act, 1838. This requires to be signed by the party or his agent, and upon it the Sheriff-Clerk grants a fiat, which is executed by a sheriff-officer. Act of 1838, sec. 11; Sheriff Courts (Scotland) Extracts Act, 1892 (general directions). A form is given on p. 500.

The various statutes imposing taxes, etc., prescribe, as a rule, a special summary procedure for their recovery, and this is generally followed.

4. For payment of sums decerned for as aliment. In this case imprisonment, which proceeds not upon the extract decree but upon a special warrant of the Sheriff, is only competent if the debtor is unable to show that his failure to pay is not wilful. Debtors (Scotland) Act, 1880, sec. 4; Civil Imprisonment (Scotland) Act, 1882, secs. 3 and 4.

* Imprisonment under a *meditatio fugæ* warrant may now be regarded as abolished, *Glenday v. Johnston*, 1905, 8 F. 24; 43 S.L.R. 38; 13 S.L.T. 467.

Imprisonment for aliment is dealt with on p. 182.

CHAPTER XIV.

ACTIONS REQUIRING SPECIAL PROCEDURE

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IN the actions now to be referred to, some divergence from the usual procedure, as described in the foregoing chapters, takes place, some special requirements have to be observed, and some special features call for notice. The various points of difference in each action will be noted, but otherwise, so far as not specially mentioned, the ordinary rules of practice are generally applicable.

I. ACTIONS *AD FACTA PRÆSTANDA*

These are actions in which the performance of some act, such as delivery or implement, is craved.

1. Action of Delivery.

The crave in a writ of delivery may be framed on one or other of the following lines:—

(1) It may be a crave for delivery only, in which event the decree can only be enforced by imprisonment.

(2) It may have, in addition to the crave for delivery, a crave for authority to officers of Court to search for and take possession of the articles sought, and the decree will then be carried out by that means.

As to competency of obtaining this authority where it is not asked in the crave, see *Ferguson's Curator Bonis*, 1905, 7 F. 898; 42 S.L.R. 689; 13 S.L.T. 222.

(3) It may include an alternative crave for a sum of money in the event of the defender failing to deliver, in which case imprisonment will not be competent, but ordinary diligence may follow on the decree for payment.

Holman & Co. v. Union Electric Co., 1913, S.C.; 50 S.L.R. 767; 2 S.L.T. 5.

A form of writ is given on p. 456.

As to crave for delivery against more than one person, see *Sinclair v. Gardner*, 1916, 33 Sh. Ct. Rep. 28.

2. Action for Implement.

In an action for implement the crave must state precisely what is to be done and how the desired implement is to be effected.

Robertson v. Cockburn, 1875, 3 R. 21; *Middleton v. Leslie*, 1892, 19 R. 801; 29 S.L.R. 657.

As to when specific implement can be competently sought, see *Cocker v. Crombie*, 1893, 20 R. 954; 30 S.L.R. 841; 1 S.L.T. 153; *Gall v. Loyal Glenbogie Lodge*, 1900, 2 F. 1187; 37 S.L.R. 911; 8 S.L.T. 140.

A form of writ will be found on p. 454.

Procedure on Decree.—The procedure in an action *ad factum præstandum* up to obtaining decree is the same as in an ordinary action, and as previously described. The decree must be followed by a charge on the defender to obey it, and may then be carried out by ordinary diligence or by imprisonment, according to its terms.

The interlocutor ordering implement should specify a time within which performance is to be made, *Macdonald v. Mackes-*

sack, 1888, 16 R. 168; 26 S.L.R. 124. If it does not do so, the extract will contain warrant to charge on an *induciæ* of seven days, *M'Lintock v. Prinzen and Others*, 1902, 4 F. 948; 39 S.L.R. 760; 10 S.L.T. 157; *Rudman v. Jay & Co.*, 1908, S.C. 552; 45 S.L.R. 411; 15 S.L.T. 853 (imprisonment where performance said to be impossible).

The charge must state explicitly in what way the decree is to be implemented, *Anderton v. Law*, 1911, 27 Sh. Ct. Rep. 87.

The procedure for obtaining a warrant to imprison on the expired charge is regulated by the Debtors (Scotland) Act, 1838, secs. 10 and 11, and the Sheriff Courts (Scotland) Extracts Act, 1892.

In order to imprison, the execution of charge is registered in the Sheriff Court books, and a minute craving warrant to imprison is endorsed on the extract decree.

A form of minute is given on p. 500.

This minute is signed by the pursuer or his agent. The clerk writes on it *fiat ut petitur*, adhibiting his signature and the date. The warrant is executed by a sheriff-officer or a messenger-at-arms.

Re-imprisonment on the same diligence is competent, *Forge v. Stewart & Macdonald*, 1876, 3 R. 1149; 13 S.L.R. 690.

An order to consign was held a decree *ad factum præstandum*, and enforceable by imprisonment, *M'Kenzie v. Balerno Paper Mill*, 1883, 10 R. 1147; 20 S.L.R. 757.

The incarcerator has to deposit money for the defender's interim aliment, and it is in the power of the defender to make application to the Sheriff for an award of aliment. The defender is then examined as to his ability to aliment himself, and the Sheriff grants or refuses the application in his discretion. The pursuer is not bound, as a rule, to aliment the defender, when it is in his power to obtain liberation on implement of the decree.

Brechin v. Taylor, 1842, 4 D. 909. See Act 1696, c. 32 (Act of Grace); 6 Geo. iv. c. 62; Prisons (Scotland) Act, 1877, 40 & 41 Vict. c. 53, secs. 70 and 71; Civil Imprisonment (Scotland) Act, 1882, 45 & 46 Vict. c. 42, sec. 8.

Liberation of Defender.—The defender will be liber-

ated either—(a) on performance of the obligation which he has been ordained to fulfil; (b) by the consent of the incarcerator; (c) on failure of the incarcerator to pay aliment for him, should he have been ordained to do so; (d) by warrant of the Court by the order of which he was imprisoned; or (e) by order of the Supreme Court on a suspension of the proceedings, or on bill of suspension and liberation.

II. INTERDICT

The object of the action of interdict is to have the defender prohibited from doing some specific act.

In applications for interdict it is frequently necessary to have the existing state of matters preserved, as the intended evil may be done before a decision can be obtained in the cause. The party applying for interdict may, on lodging the writ, and satisfying the Sheriff of the urgency, obtain an interlocutor granting interim interdict, which should be intimated to the defender.

When interim interdict is sought, the writ should contain an express crave therefor, and the condescendence must contain averments sufficient to justify the application. In a defended action, interim interdict may be granted at any time although not expressly craved in the writ.

An interim interdict may be appealed to the Sheriff within fourteen days from the date of intimation thereof, Act of 1907, Rule 86, as amended by Act of 1913.

If the respondent is aware of the interdict having been granted, he will be responsible for breach, although it may not have been served on him, *Henderson v. M'Lellan*, 1874, 1 R. 920; 11 S.L.R. 531.

Interim interdict is granted *periculo petentis*, *Fife v. Orr*, 1895, 23 R. 8; 33 S.L.R. 1; 3 S.L.T. 114.

If the defender anticipates an application for interim interdict, he can obtain an opportunity of being heard before it is granted, by lodging a caveat with the Sheriff-Clerk. A caveat apparently holds good for one month. A.S., 22nd February, 1922, Part II. 29.

An interim interdict subsists until expressly recalled or till final decree in the action, *Clippens Oil Co. v. Edinburgh Water Trust*, 1906, 8 F. 731; 43 S.L.R. 540; 44 S.L.R. 669; 13 S.L.T. 957,

985; *Home Drummond and Others v. M'Lachlan*, 1908, S.C. 12; 45 S.L.R. 15; 15 S.L.T. 403.

A bond of caution in respect of which interdict has been granted was held to cover expenses, though not stated, *Henderson v. Hossack*, 1907, 15 S.L.T. 604.

A third party having interest is entitled to be sisted in the action of interdict, *Gas Power, etc., Co. Ltd. v. Power Gas Corp'n. Ltd.*, 1911, S.C. 27; 48 S.L.R. 38; 1910, 2 S.L.T. 241.

The crave of the writ must be so framed that the decree passing on it may show clearly, distinctly, and completely, what the respondent is not to do.

Cairns v. Lee, 1892, 20 R. 16; 30 S.L.R. 47.

When interdict was granted on caution, and caution was not found, an action for damages for wrongful interdict was held irrelevant, *Wilson v. Gilchrist*, 1900, 2 F. 391; 37 S.L.R. 300; 7 S.L.T. 322.

A form of writ is given on p. 458.

III. BREACH OF INTERDICT

If an interdict is broken, the pursuer can, by writ of breach of interdict, apply to the Court to have the defender punished by fine or imprisonment. The consent of the Procurator-Fiscal is necessary.

As to competency of amendment of writ for breach of interdict, see *Dunlop Pneumatic Tyre Co. Ltd. v. Rose*, 1901, 3 F. 635; 38 S.L.R. 442; 8 S.L.T. 454.

The respondent may be ordained to appear personally at the bar.

Walker v. Junor, 1903, 5 F. 1035; 40 S.L.R. 745; 11 S.L.T. 189; *Welsbach, etc., Light Co. v. M'Mann*, 1901, 4 F. 395; 39 S.L.R. 270; 9 S.L.T. 387; *Earl of Galloway v. Nixon*, 1877, 5 R. 28; 15 S.L.R. 12; *Stark's Trs. v. Duncan*, 1906, 8 F. 429; 43 S.L.R. 288; 13 S.L.T. 737.

The punishment of imprisonment when imposed by the Court is carried out as upon a criminal warrant, without any proceedings by the pursuer.

The ordinary rules as to civil appeals apply, notwithstanding the quasi-criminal nature of the action, *Stark's Trs. v. Duncan*,

supra, *Maclachlan v. Bruce & Co.*, 1912, S.C. 440; 49 S.L.R. 433; 1 S.L.T. 129.

A form of writ is given on p. 459.

IV. LAW BURROWS

A party having reason to fear bodily harm from another, may, by writ of law burrows, have him ordained to find caution that he will not trouble or molest him.

The procedure is by summary application. It is regulated by the Civil Imprisonment (Scotland) Act, 1882, sec. 6, and will fall under sec. 50 of the Sheriff Court Act of 1907.

The first deliverance contains a warrant to cite the defender and witnesses to a fixed diet, at which evidence is led by both parties without any record or written pleadings in the summary manner provided by the Summary Jurisdiction (Scotland) Act, 1908, which repeals the Summary Procedure Act, 1864, and the Summary Jurisdiction (Scotland) Act, 1881. If the Sheriff is satisfied of the danger (the evidence of one credible witness being sufficient), the defender will be ordained to find caution or grant bond that he will not molest the pursuer, and, failing his doing so, he may be imprisoned for a period not exceeding six months. Expenses may be awarded, and an ordinary decree granted therefor.

There appears to be no appeal against a judgment of the Sheriff refusing the application. The pursuer does not aliment the defender in prison. Civil Imprisonment Act, 1882, sec. 6.

In view of the provisions of the Civil Imprisonment (Scotland) Act, 1882, it has been held that suspension is not the appropriate method of review of a decree of law burrows, and that resort should be had to appeal by stated case under the Summary Jurisdiction Act, 1908. *Mackenzie v. Maclellan*, 1916, S.C. 617; 53 S.L.R. 452; 1916, 1 S.L.T. 311. See also sequel in 1917, 33 Sh. Ct. Rep. 82.

V. COUNT, RECKONING, AND PAYMENT

The crave of the writ in this case concludes for production of the defender's accounts, to show the sum to which the pursuer is properly entitled, and for payment thereof, or failing their production, for payment of an estimated sum.

If the defender does not appear, decree in absence for the sum craved will be granted.

Where defences are lodged against the accounts being produced, the record is closed, and decision is given on the question of the pursuer's right to have the defender ordained to count and reckon. If no defence is stated as regards the liability to account, or if the liability to account is held by the Sheriff to be established, the accounts are ordered to be lodged, and thereafter, if the amount due is disputed, the parties will be allowed to lodge objections thereto, and answers to the objections. The action will then be disposed of by debate or proof. A remit to an accountant to report on the accounts is usual, and often convenient, and may be made either before, or subsequent to, or in place of a proof, according to the circumstances of the case.

As to action of accounting under the Bankruptcy Act, 1856, sec. 142, see *Hemming v. Galbraith*, 1908, S.C. 897; 45 S.L.R. 737; 16 S.L.T. 202; *Swanson v. Gardner & Co.*, 1917, 33 Sh. Ct. Rep. 117. (If against a firm individual partners should be cited.)

A form of writ is given on p. 451.

VI. MULTIPLEPOINDING

Multipoleinding is the process for determining the right to property of any kind, to which there are two or more competing claimants, and for enabling the holder of any such property to be discharged of all claim in respect thereof.

In view of the extended jurisdiction regarding heritage

conferred by the 1907 Act, it would seem that the competency of a multiplepounding in the Sheriff Court is, as regards subject-matter, now equal to that of the Court of Session.

The subject of the action, termed the fund or subject *in medio*, may be either specific moveables, moveable rights corporeal or incorporeal, or heritable rights.

Edinburgh Merchant Maiden Hospital v. Greig's Exrs., 1902, 10 S.L.T. 317; *Byre's Trs. v. Gemmell*, 1895, 34 S.L.R. 569; 2 S.L.T. 455; *Boyd's Trs. v. Boyd*, 1906, 13 S.L.T. 878 (rights of heritage).

An actual liability to pay or to account for the fund *in medio* must exist, although the amount of the fund may not be ascertainable at the time.

Nimmo v. Murray, 1863, 1 M. 791; *Highland Railway Co. v. British Linen Bank*, 1901, 38 S.L.R. 584; *Royal Bank v. Livie*, 1903, 11 S.L.T. 549.

The action may be raised either by the person who is the holder of the fund or subject in dispute, who is then termed the pursuer and real raiser, or it may be raised by a claimant to the fund in the name of the holder, who is in that case termed the pursuer and nominal raiser, the claimant being in that case the real raiser, and being called and cited as a party to the action.

A form of writ is given on p. 453.

Competency of Action.—This action is competent to any holder of a fund or property who is called upon to pay it over to conflicting claimants. The old rule that to constitute double distress, diligence on the same fund at the instance of different parties must be done or at least threatened, no longer holds. It is sufficient to justify an action of multiplepounding that rival claims are seriously put forward against the holder of the fund. In the case of the party holding the fund being in a fiduciary position, *c.g.* trustee, executor, depositary, the action is competent as above stated, and also, although no claims are actually put forward, if the holders have real difficulty in disposing

of the estate in their hands, either by reason of the beneficiaries disputing among themselves as to their respective rights, or because there is reasonable doubt as to who are the beneficiaries, or because from any cause the holders of the fund are unable to obtain a complete and valid discharge of the fund in their hands.

The application of these principles sometimes presents difficulties.

The action may be raised by trustees though there are no competing claims, *Davidson v. Ewen*, 1895, 3 S.L.T. 162; *Greenshields Trs. v. Greenshields*, 1915, 2 S.L.T. 189.

The action has been held competent in the following cases:—

(a) To try question of validity of deed of appointment, *Ogilvie's Trs. v. Chevalier*, 1874, 1 R. 693; 11 S.L.R. 315.

(b) Where price of waygoing crop claimed by arrester and landlord, *Park v. Watson*, 1874, 2 R. 118; 12 S.L.R. 117.

(c) Where sum, due under decree for expenses in name of agent disbursing, claimed by arresting creditor of the client, *Pollard v. Gallorway*, 1881, 9 R. 21; 19 S.L.R. 12.

(d) Where goods arrested were claimed by party producing receipt for the price thereof, *N.B. Railway Co. v. White*, 1881, 9 R. 97; 19 S.L.R. 59.

(e) To determine right to fund arrested in hands of Procurator-Fiscal, *Stuart v. Cowan & Co.*, 1883, 10 R. 581; 20 S.L.R. 374 (question of competency of arrestment reserved); cf. *Shankland & Co. v. M'Gildowny*, 1912, S.C. 857; 49 S.L.R. 564; 1 S.L.T. 410 (arrestment of sum consigned in hands of Sheriff-Clerk).

(f) Where the claims arose on an intimated bill and arrestment, *Lattimer v. Wight*, 1880, 18 S.L.R. 57.

(g) To determine rights in the stock of a railway company, where the amount claimed exceeded its issuing powers, *Girvan and Portpatrick Railway Co. v. Lamond*, 1886, 13 R. 931; 23 S.L.R. 671.

(h) Where the estate of a deceased person was insufficient to meet all the debts, *Jamieson v. Robertson*, 1888, 16 R. 15; 26 S.L.R. 12.

(i) Where sum deposited in hands of third party who desired discharge, *Winchester v. Blakey*, 1890, 17 R. 1046; 27 S.L.R. 811.

(j) Where deposit-receipt in bank in joint names and proceeds claimed by each party, *Commercial Bank v. Muir*, 1897, 25 R. 219; 35 S.L.R. 174; 5 S.L.T. 229; but otherwise, *Royal Bank v. Ellis*, 1902, 10 S.L.T. 167. See also *Colonial Mutual, etc., Society, Ltd. v. Brown*, 1911, 48 S.L.R. 427; 1 S.L.T. 158.

(k) To ascertain whether missing person deceased or not, *Meikle v. Tait's Factor*, 1890, 17 R. 1182; 27 S.L.R. 902.

(l) Where double claims made, though one was alleged to be groundless, the holder not being bound to judge of their validity, *Royal Bank v. Price*, 1893, 20 R. 290; 30 S.L.R. 339; *Fraser's Exrs. v. Wallace's Trs.*, 1893, 20 R. 374; 30 S.L.R. 421.

(m) Where bill claimed by holder's trustee and arrestment by creditor used, *Dill & Co. v. Ricardo's Trs.*, 1885, 12 R. 404; 22 S.L.R. 310.

(n) Where two parties claimed bill of exchange, *Agnew v. White*, 1899, 1 F. 1026; 36 S.L.R. 816.

(o) To determine rights of partners in assets of firm in hands of a trustee, *Tait v. Geddie*, 1896, 3 S.L.T. 289.

(p) To settle question between arrester and third party claiming ownership of arrested goods, *Ross v. Plano Co.*, 1902, 10 S.L.T. 314.

(q) To determine question between trustee and claimants on estate of bankrupt, *M'Dowell & Neilson's Trs. v. Haggard & Co.*, 1905, 8 F. 235; 43 S.L.R. 117; 13 S.L.T. 632.

The action has been held incompetent in the following cases:—

(a) Where there was only one arrestment, *Mitchell v. Strachan*, 1869, 8 M. 154; 42 J. 67; *Bank of Scotland v. Comrie*, 1871, 8 S.L.R. 419.

(b) Where a judicial factor brought an action of multiple-poining instead of a petition for discharge, *Campbell v. Grant*, 1869, 8 M. 227; 42 J. 100.

(c) Where there was only one claimant, *Clark v. Campbell*, 1873, 1 R. 281; 11 S.L.R. 138; *Royal Bank v. Ellis*, 1902, 10 S.L.T. 167 (sum claimed by creditor, consigned by debtor); *Milne v. Louttit's Tr.*, 1898, 5 S.L.T. 297 (question between selling creditor and debtor); *French v. Hohbach*, 1921, 2 S.L.T. 53.

(d) Where the question raised was assignee's title to uplift a legacy, *Connel's Trs. v. Chalk*, 1878, 5 R. 735; 15 S.L.R. 413.

(e) By a creditor on an estate being administered under a trust-deed, *Kyd v. Waterston*, 1880, 7 R. 884; 17 S.L.R. 632.

(f) By beneficiaries, on the ground that the trustees were paying a claim which they disputed, *Robb's Trs. v. Robb*, 1880, 7 R. 1049; 17 S.L.R. 717. See also *Gordon v. Gordon*, 1895, 32 S.L.R. 355; 2 S.L.T. 551; *Mackenzie's Trs. v. Sutherland*, 1895, 22 R. 233; 32 S.L.R. 172; 2 S.L.T. 422; *Glen's Trs. v. Miller*, 1911, S.C. 1178; 48 S.L.R. 931; 2 S.L.T. 178 (observations on nature of claims against trustees, which will justify their raising action); *National Provident Institution v. M'Leod*, 1915, 2 S.L.T. 328; *M'Gregor v. Macfarlane*, 1915, 31 Sh. Ct. Rep. 105.

(g) Where the action embraced the whole estate while the double distress affected only part of it, *Macnab v. Waddell*, 1894, 21 R. 827; 31 S.L.R. 679; 2 S.L.T. 44. Also *M'Gillivray's Trs. v. Dallas*, 1905; 7 F. 733; 42 S.L.R. 791; 13 S.L.T. 288; *Johnston v. Richardson*, 1905, 13 S.L.T. 537.

(h) Where sum deposited for certain purposes and the depositor died, *Glass v. Robertson*, 1899, 1 F. 391; 36 S.L.R. 290; 6 S.L.T. 280.

(i) Where creditor arrested on dependence and debtor was sequestrated before decree, *Wishart v. Reynolds*, 1900, 8 S.L.T. 123.

(j) Where no double distress and no conclusions for exoneration, *Paterson's Trs. v. Paterson*, 1899, 7 S.L.T. 134.

(k) Where the estate forming the fund *in medio* had been paid away, *Richardson v. Wilson*, 1905, 12 S.L.T. 775.

(l) Where the real question at issue would only arise after payment of the fund, *Commercial Union Insurance Co. Ltd. v. Globe Co. Ltd.*, 1916, 1 S.L.T. 343.

A multiplepoinding may not have the effect of stopping diligence, *Ferguson v. Bothwell*, 1882, 9 R. 687; 19 S.L.R. 465.

The points in which the procedure in a multiplepoinding differs from the ordinary procedure are the following:—

1. The action may be raised in the sheriffdom where the fund or subject *in medio* is situated, or in that to the jurisdiction of which the holder of the fund *in medio* is subject. Act, sec. 6 (g), rule 128.

2. Appearance need not be entered unless objections are to be taken to the competency of the action. The competency may be objected to by any person called as a defender who maintains that there is no double distress, or that from any other cause the action should not have been raised, and also in the case of an action raised by a claimant where the nominal raiser denies that he has any fund in his hands. Defences will be lodged, the record closed, and the question of competency determined as in an ordinary action.

3. If there are no objections to the competency of the action, or if there are such, then after the interlocutor repelling them has become final, the amount of the fund has to be ascertained and fixed. This may be done at any stage previous to the decree for payment. The holder of the fund will be found liable in only once and single payment, and will be ordered to lodge a condescendence of the fund *in medio*, and any claimants will be allowed to lodge objections thereto. Objections will take the form of a condescendence with pleas in law appended. The holder of

the fund may answer this, and the record will be closed on the condescendence and answers, and the questions raised determined. It is generally convenient to postpone the question of the amount of the fund until after the competition between the claimants is disposed of. In any case objections to the amount must be disposed of, and the fund approved of, before any decree for payment is pronounced.

Dennis' Trs. v. Barstow, 1870, 9 M. 281.

The holder may, at any time after the condescendence of the fund has been approved of, consign the fund in the hands of the Clerk of Court, and thereupon obtain exoneration and discharge.

He may be ordered to consign, under reservation of any claims he may have on the fund, *Lang v. Downie*, 1872, 9 S.L.R. 308.

The Sheriff may allow the real raiser his expenses preferably out of the fund *in medio*, *Hepburn's Trs. v. Rex*, 1894, 21 R. 1024; 2 S.L.T. 103. See also rule 129.

4. Where no defences have been lodged, or after defences have been stated and repelled, the Sheriff orders claims, and, if necessary, answers thereto. Rule 130.

It is usual to take a second order for claims, and where there is any doubt as to whether all parties possibly interested in the fund have been cited in the action, advertisement of the dependence of the action should be ordered to be made in the appropriate newspapers.

5. Upon claims being lodged, a record is made up in the competition, each claimant adjusting his claim so as to meet the objections thereto, and also dealing with the conflicting claims. Answers to a claim may, if necessary, be ordered from a competing claimant.

See *Dickson & Walker v. John Mitchell & Co.*, 1910, S.C. 139; 47 S.L.R. 110; 1909, 2 S.L.T. 390 (*per* L. President).

The claim consists of—(a) Condescendence setting forth the facts upon which the claimant bases his right to the fund; (b) a formal claim stating specifically whether the whole or what share of the fund *in medio* is claimed; and (c) pleas in law. Parties claiming on the same grounds

may state the facts on which they base their claims on the same paper; but, where necessary, they must append separate claims and separate pleas in law. Rule 131.

6. Claimants may appear, whether called as defenders or not, at any stage of the case so long as a final decree has not been pronounced, subject to such conditions as to expenses as the Court may impose.

After two claimants had been ranked, a third was allowed to appear, on payment of expenses to successful claimants, *National Bank v. Campbell*, 1901, 4 F. 17; 39 S.L.R. 13; 9 S.L.T. 211; but see *Wilson's Trs. v. Clydesdale Bank*, 1900, 37 S.L.R. 791; 8 S.L.T. 29; see also *Gauden's Trs. v. Jamieson*, 1902, 10 S.L.T. 326; and *Union Bank v. Gracie*, 1887, 25 S.L.R. 61 (ranking "for aught yet seen"); *Landale v. Wilson*, 1900, 2 F. 1047; 37 S.L.R. 791; 8 S.L.T. 68 (claim after ranking had become final refused as too late).

A claim was not allowed to be enlarged, on another claim being rejected, *Graham's Trs. v. Graham*, 1868, 6 M. 820; 40 J. 452; but see *Purves' Trs. v. Purves*, 1900, 8 S.L.T. 179.

A claim was allowed to be lodged after decree of preference, on payment of expenses, *Binnie's Trs. v. Henry's Trs.*, 1883, 10 R. 1075; 20 S.L.R. 723; *Cowan's Trs. v. Cowan*, 1888, 16 R. 7; 26 S.L.R. 9. A party being abroad and unaware of the proceedings, was allowed to lodge a claim after proof had taken place, without paying expenses, *Sawers' Factor v. Sawers*, 1889, 17 R. 1; 27 S.L.R. 16. A claim repelled was allowed to be renewed under change of circumstances, *Cameron v. Young*, 1873, 45 J. 272. After interlocutor of ranking had become final, but no decree for payment had been pronounced, a claim by a party subsequently lodged was dismissed as incompetent, *Steele v. Ker*, 1911, S.C. 832; 48 S.L.R. 743; 1910, 1 S.L.T. 1, 380.

A second claim on new grounds was allowed on payment of expenses, *Dymond v. Scott*, 1877, 5 R. 196; 15 S.L.R. 96.

As to withdrawing claim under error and lodging new claim, see *Scottish Life Assurance Company v. Donald*, 1902, 9 S.L.T. 200; and as to abandonment, see *Duncan's Factor v. Duncan*, 1874, 1 R. 964.

As to amendment of claim, see *Terrell v. Ker*, 1900, 2 F. 1055; 37 S.L.R. 807; 8 S.L.T. 74; *Hall's Trs. v. Macdonald*, 1892, 19 R. 567 at p. 580; 29 S.L.R. 465.

Riding Claim.—It is competent for a creditor of a claimant in a multiplepinding to lodge a riding claim, under

which he may obtain payment of his debt out of the fund to which the claimant may eventually be found entitled. To support a riding claim, the creditor's debt must be founded on arrestment, bill, bond, or other liquid document of debt.

A riding claim may not be lodged after the original claimant has obtained decree for payment, *Anglo-Foreign Banking Company*, 1879, 16 S.L.R. 731; see also *Gill's Trs. v. Patrick*, 1889, 16 R. 403; 26 S.L.R. 292; *Scottish Life Assurance Company v. Donald, Ltd.*, 1902, 9 S.L.T. 348.

Discharge of Holder of Fund.—The holder of the fund may obtain an interlocutor exonerating and discharging him of the fund *in medio* at any time after his condescence of the fund has been approved of, and either on his consigning the fund in the hands of the Clerk of Court, or if the competition between the claimants has been disposed of, on his paying over the fund, or conveying the property *in medio* to the person found entitled to it.

Farquhar v. Farquhar, 1886, 13 R. 596; 23 S.L.R. 406.

Special Features as to Expenses.—In actions of multiplepounding modifications of the ordinary rules as to the expenses are met with. As a general rule:—

1. The real raiser will be entitled to the expenses of raising the action and obtaining his discharge out of the fund *in medio* preferably to all other charges.

2. Litigation as to the amount of the fund follows the ordinary rules of liability for expenses.

3. When the competition arises out of questions of construction of wills or marriage contracts, the expenses of claimants, whether successful or unsuccessful, are allowed out of the fund *in medio*.

This rule does not apply to questions not attributable to the conduct of the testator, *e.g.* litigation as to domicile, *Brooks v. Brooks' Trs.*, 1902, 4 F. 1014; 39 S.L.R. 816. Nor to questions of application of a statute to the terms of a deed, *Dundas' Trs. v.*

Dundas' Trs., 1912, S.C. 375; 49 S.L.R. 417; 1 S.L.T. 141 (application of Finance Act to provisions in deed).

4. Competition between claimants is subject to the ordinary rules as to expenses.

VII. FURTHCOMING

Furthcoming is the action by which a creditor who has arrested, in the hands of a third party, money or other moveable property belonging to a debtor, makes it furthcoming, and effects its transference to himself in or towards satisfaction of his debt.

The creditor or raiser of the action is called the arrester; the debtor is technically known as the common debtor; and the third party in whose hands the arrestment has been made is the arrestee. The common debtor and the arrestee must be called together as defenders.

Competency of Action.— The grounds of the action are (1) the arrestment, and (2) a duly constituted debt on which the arrestment proceeded.

If the arrestment has been used on the dependence of an action, there need not be a second arrestment on the decree, *Benhar Coal Co. Liqr. v. Turnbull*, 1883, 10 R. 558; 20 S.L.R. 366; *Abercrombie v. Edgar & Crerar Ltd.*, 1923 S.L.T. 271.

A form of writ is given on p. 454.

Procedure.— 1. Where there are defences, the procedure is, as nearly as may be, that followed in ordinary actions in which defences have been lodged. Act of 1907, rule 132.

2. The action may be raised in the sheriffdom in which the fund or subject arrested is situated, or in that to the jurisdiction of which the arrestee is subject, although the common debtor may not reside within either of these sheriffdoms. Act, sec. 6 (g), rule 128.

3. The expense of the action is deemed part of the arrester's claim, and may be made good out of the arrested fund. Rule 129.

4. Either the arrestee or the common debtor, or both, may lodge defences. The arrestee can take all competent objections to the arrestment, and also plead against the arrester every defence which he could have pleaded in answer to an action by the common debtor. He cannot state defences competent to the common debtor provided the debt is properly constituted. The common debtor can state defences against the regularity of the arrestment; the competency of defences against the claim depends upon how it is constituted.

Application for recall of arrestment was held not to be the proper process for determining the validity of an arrestment in *Vincent v. Chalmers & Co.'s Tr.*, 1877, 5 R. 43; 15 S.L.R. 27; but see otherwise in *Barclay, Curle & Co. Ltd. v. Laing & Sons*, 1908, S.C. 82; 45 S.L.R. 87; 15 S.L.T. 644; and *Lord Ruthven v. Drummond*, 1908, S.C. 1154; 45 S.L.R. 901; 16 S.L.T. 335. An action of furthcoming may be raised before the debt arrested is payable to the common debtor, *Jameson v. Sharp*, 1887, 14 R. 643; 24 S.L.R. 453.

5. Any person who has an interest in the fund or subject may come forward and state defences. Where there is a claim competing with the arrestment, multiplepounding is ordinarily the proper form of action.

6. Where the subject of the arrestment is not money, but is other moveable property, the writ should include a crave for warrant of sale in order to operate payment of the debt out of the proceeds.

Valentine v. Grangemouth Coal Co., 1897, 35 S.L.R. 12 (warrant of sale of arrested shares); *Lucas' Trs. v. Campbell & Scott*, 1894, 21 R. 1906; 31 S.L.R. 788; 2 S.L.T. 101 (the crave in an action of furthcoming should be so framed as to be operative in view of the nature of the property in question). See also *Clark v. Scottish Amicable Life Assurance Society*, 1922 S.L.T. (Sh. Ct. Rep.) 88.

7. Where the arrestment has been loosed on caution, the creditor's remedy is a direct action against the cautioner, to which action the arrestee and the common debtor should be called as parties.

VIII. ACTIONS OF ALIMENT, ACTIONS OF SEPARATION,
AND ACTIONS RELATING TO THE CUSTODY OF CHILDREN

The jurisdiction of the Sheriff Court in regard to actions of aliment and actions relating to the custody of children is by the Act of 1907, section 5 (2), as amended by the Act of 1913, defined as extending to and including “ (2) Actions of aliment, provided that as between husband and wife they are actions of separation and aliment, adherence and aliment, or interim aliment, and actions for regulating the custody of children.”

This section embodies, but also enlarges, the former common law jurisdiction of the Sheriff. It deals with actions forming one group or class, but consisting of three varieties, viz. :—

1. Actions of aliment. This variety would cover all claims for sums sought in name of aliment, excluding such as are between husband and wife.

2. Actions of aliment between husband and wife, these being further distinguished as actions of—

- (a) separation and aliment;
- (b) adherence and aliment;
- (c) interim aliment.

3. Actions for regulating the custody of children.

See as to jurisdiction and competency in such actions, p. 17.

Special features of procedure applicable to all actions of aliment are the following :—

- (a) The action ought to proceed with greater despatch than other cases;
- (b) An interim award of aliment may be granted at any stage;
- (c) Wages due to the defender, even although less than twenty shillings per week, may be arrested on a decree for aliment.

Wages Arrestment Limitation (Scotland) Act, 1870, 33 & 34

Vict. c. 63. Wages under that amount cannot be arrested on the dependence. See further as to arrestment, *Matthew v. M'Leish*, 1875, 1 Guth. 371.

- (d) A decree for aliment may be regarded as a permanent decree only when that expression is used in contradistinction to an interim decree; it is never absolutely permanent. An application to alter the rate is competent in change of circumstances.

Hay v. Hay, 1882, 9 R. 667; 19 S.L.R. 442 (child born after separation, aliment increased); *Oliver v. Bain*, 1894, 2 S.L.T. 106; *Scott v. Scott*, 1894, 21 R. 853; 31 S.L.R. 714; 2 S.L.T. 53; *Rowat v. Rowat*, 1904, 12 S.L.T. 449; *Macdonald v. Macdonald*, 1881, 8 R. 985; 18 S.L.R. 706; *Stewart v. Stewart*, 1887, 15 R. 113; 25 S.L.R. 104; *M'Keddie v. M'Keddie*, 1902, 9 S.L.T. 381 (aliment fixed in separation contract altered); *Purves' Trs. v. Purves*, 1900, 8 S.L.T. 179; *Robertson v. Robertson*, 1905, 13 S.L.T. 114.

A decree of separation cannot be recalled, even though the grounds of the action should be permanently removed, *Strain v. Strain*, 1890, 17 R. 297; 27 S.L.R. 239.

- (e) In addition to ordinary diligence on the decree, warrant for imprisonment may, in certain defined circumstances, be obtained.

Civil Imprisonment (Scotland) Act, 1882, sec. 4. See p. 182.

1. ACTIONS OF ALIMENT

The cases falling under this category will apparently be the following:—

- (a) action by an indigent parent against his children;
- (b) action by a child against his parent;
- (c) action by the mother of an illegitimate child against the father.

These cases are simply actions for payment of debt, raising no question of status, and were always competent in the Sheriff Court.

An action for payment of aliment due to a wife under a contract of separation would probably be held to fall within this class of action.

As to rate of aliment allowed in actions of affiliation, see *Forbes v. Matthew*, 1919, S.C. 242; 56 S.L.R. 137; 1919, 1 S.L.T. 77; *Stevens v. Jones*, 1914, 30 Sh. Ct. Rep. 228 (duration); *Stewart v. Allison*, 1923 S.L.T. (Sh. Ct.) 18 (aliment for unborn child).

Examples of forms of writs applicable to such cases are given on pp. 446-450.

2. ACTIONS OF SEPARATION AND ALIMENT

This action was introduced into the Sheriff Court by the Act of 1907, section 5 (2). The Act of 1913, by rule 23, excluded from the cases in which decree in absence could be given actions of separation and aliment, adherence and aliment, interim aliment, and actions for regulating the custody of children.

The grounds on which an action of separation and aliment can be raised are either (a) adultery, or (b) cruelty.

A form of writ is given on p. 449.

The Act of 1907 gives no special directions as to procedure in this action. So far as the Act and the rules go, there seems no reason why such an action should not be treated precisely as an action for recovery of a debt or any other ordinary action, except that owing to the alteration of rule 23 by the Act of 1913, decree in absence may not be taken. The practice followed in these cases in the Court of Session should, however, be followed, as far as possible, when the case is brought in the Sheriff Court. There is, however, considerable difficulty in applying rules laid down by statutes which have not been made expressly applicable to the Sheriff Court.

See opinions on this subject in *Grant v. Grant*, 1908, 24 Sh. Ct. Rep. 114.

The special features of peculiarity that may arise in regard to an action of separation and aliment may be summarised as follows :—

(1) Jurisdiction as regards defender.

While the Sheriff's jurisdiction has been extended so as to include actions of separation, the statute has made no special provisions as to the constitution of jurisdiction as regards the defender. The ordinary rules as to jurisdiction founded on residence will therefore be applicable.

As to jurisdiction in the Court of Session, see *Hood v. Hood*, 1897, 24 R. 973; 34 S.L.R. 735; 5 S.L.T. 61; *Linder v. Linder*, 1904, 11 S.L.T. 777; *Wingrave v. Wingrave*, 1919, 35 Sh. Ct. Rep. 97. (Residence will give jurisdiction over Englishman.)

Jurisdiction arising in any way other than by residence would, it is thought, not be sufficient, *Holt v. Holt*, 1908, 25 Sh. Ct. Rep. 112 (jurisdiction for an action of separation cannot be founded by arrestment).

(2) Service of the writ personally where the defender is abroad.

In an action in the Court of Session when the defender is not resident in Scotland, the writ must be served upon him personally. If the Court is satisfied that the defender cannot be found, edictal citation will be held sufficient, provided the writ is also served on the children of the marriage, if any, and on one or more of the next-of-kin of the defender, when known and resident in the United Kingdom. Conjugal Rights (Scotland) Amendment Act, 1861, sec. 10; *Laughland v. Laughland*, 1882, 19 S.L.R. 645. The service on the defender abroad may be made by delivery of the copy writ to him by any person authorised by the pursuer. Court of Session Act, 1868, sec. 100.

An action of separation against a foreigner would probably rarely be seen in the Sheriff Court; if, however, a defender were abroad, though only temporarily, when the action is raised, it is thought that personal service should be adopted on the ground of expediency.

(3) Arrestment on the dependence of an action of separation and aliment is competent as in any other pecuniary action, but will only be sustained so far as reasonable in amount. The same rule applies to arrestment on a decree.

It is not competent, as a rule, to secure future aliment by arrestment, *Burns v. Burns*, 1879, 7 R. 353; 17 S.L.R. 223; *Symington v. Symington*, 1875, 3 R. 205; 13 S.L.R. 124; *James v. James*, 1886,

13 R. 1153; 23 S.L.R. 819; *Millar v. Millar*, 1907, 15 S.L.T. 205; *Johnson v. Johnson*, 1910, 26 Sh. Ct. Rep. 134.

(4) Time of appearance.

The ordinary rules of procedure are not adhered to where their strict enforcement would be to the prejudice of either of the parties.

Defences may be lodged at any stage of the cause, *Whyte v. Whyte*, 1891, 18 R. 469; 28 S.L.R. 326 (on reclaiming note after decree); *Watts v. Watts*, 1885, 12 R. 894; 22 S.L.R. 570; *Paul v. Paul*, 1896, 4 S.L.T. 124, 171; *Cathcart v. Cathcart*, 1899, 1 F. 781; 36 S.L.R. 586; 7 S.L.T. 3; *Ross v. Ross*, 1897, 24 R. 1029; 34 S.L.R. 779; 5 S.L.T. 80; *A. B. v. C. B.*, 1912, 2 S.L.T. 255; *Christie v. Christie*, 1918, 34 Sh. Ct. Rep. 123.

(5) Decree of separation cannot be granted in absence. The case must be established by proof, whether defended or not. Rule 23, as amended by Act of 1913.

11 Geo. IV. and 1 Will. IV. c. 69, secs. 33 and 36, "the grounds of action shall be substantiated by sufficient evidence," *Stevens v. Stevens*, 1882, 9 R. 730; 19 S.L.R. 497.

This rule does not apply to an action concluding for aliment only, *Wood v. Wood*, 1882, 19 S.L.R. 361; *Wright v. Wright*, 1894, 2 S.L.T. 29.

As stated above (page 176), this requirement has now been made applicable, though by a peculiar negative method of expression, to an action in the Sheriff Court. Rule 23, which provides for decree in absence being granted where a defender does not appear, enacts as follows: "Provided that this rule shall not apply to actions of separation and aliment, adherence and aliment, or interim aliment, or to actions regulating the custody of children."

(6) Interim awards of aliment may be granted. To justify such an award there must be a *primâ facie* case and necessitous circumstances.

As a rule an interim award will not be granted previous to defences being lodged, *Pirrie v. Pirrie*, 1903, 10 S.L.T. 598.

(7) There are special features in regard to expenses in actions of separation.

(a) The wife, although unsuccessful in the cause, will be found entitled to her expenses, if she is held to have had reasonable ground for bringing the action.

Kirkhope v. Kirkhope, 1896, 4 S.L.T. 182; *Murray v. Murray*, 1893, 1 S.L.T. 260 (wife abandoned case; found entitled to expenses). But see *Elliot v. Elliot*, 1893, 1 S.L.T. 261; *Liddell v. Liddell*, 1903, 11 S.L.T. 488; *Thomson v. Thomson*, 1908, S.C. 179; 45 S.L.R. 95; 15 S.L.T. 503. (Reclaiming wife must show "that the case is a fair one to try.")

This rule will not hold if the wife has separate estate, in which case she may have to bear her own expenses if unsuccessful, and may possibly be found liable in expenses to the defender.

Robertson v. Robertson, 1908, 16 S.L.T. 641.

If the action is settled, the wife's agent will not be sisted so as to enable him to recover expenses from the husband, *Wales v. Wales*, 1901, 9 S.L.T. 371; *Riddle v. Riddle*, 1904, 12 S.L.T. 361. A separate action against the husband may be competent, *Smith v. Smith*, 1871, 9 M. 538; *Clark v. Henderson*, 1875, 2 R. 428; 12 S.L.R. 306.

(b) Expenses, as taxed between agent and client, will be allowed in an action of separation.

The taxation is on what is recognised as the "consistorial scale," or as agent and client expenses payable by a third party.

Mackellar v. Mackellar, 1898, 25 R. 883; 35 S.L.R. 483; 6 S.L.T. 18; *Grant v. Grant*, 1905, 43 S.L.R. 109; 13 S.L.T. 516; *A. B. v. C. D.*, 1906, 8 F. 973; 43 S.L.R. 731; 14 S.L.T. 170. See also *M'Caw v. M'Caw*, 1907, 15 S.L.T. 392.

(c) Interim awards of expenses during the progress of the case may be given.

To justify such awards there must be disclosed a *prima facie* case; and, as a rule, the award will be limited to necessary outlay, and will not be made until defences have been lodged.

Mitchell v. Mitchell, 1893, 1 S.L.T. 141; *Gunn v. Gunn*, 1897, 5 S.L.T. 56; *Symington v. Symington*, 1874, 1 R. 1006; 11 S.L.R. 579; 1875, 3 R. 205; 13 S.L.R. 124; *Linder v. Linder*, 1902, 4 F. 465; 39 S.L.R. 335; 9 S.L.T. 387; *M'Ewan v. M'Ewan*, 1903, 11 S.L.T. 169; *Johnston v. Johnston*, 1916, 2 S.L.T. 191; *Baird v. Clark*, 1922, S.C. 290; 49 S.L.R. 251; 1922 S.L.T. 228 (application of sum awarded).

3. ACTIONS OF ADHERENCE AND ALIMENT

This action is expressly stated to be within the jurisdiction of the Sheriff by the alteration of section 5 (2) effected by the Act of 1913. Its inclusion settles a conflict of opinion as to whether under the description "actions of aliment" as used in the 1907 Act, were embraced actions of aliment by a wife where there was no crave for separation, *e.g.* a claim founded on desertion.

A form of petition is given on p. 448.

In a case of adherence and aliment rule 23 as amended by the Act of 1913 requires that proof must be led before decree is granted.

This form of action would apparently require to be followed in the Sheriff Court in cases founded on desertion unless it be held that such cases are to fall under the category referred to in section 5 (2) as altered, of actions of interim aliment. In the Court of Session an action for aliment by a deserted wife is competent without a conclusion for adherence, and in such a case decree in absence can be obtained, *Pearce v. Pearce*, 1898, 5 S.L.T. 338; *Gatchell v. Gatchell*, 1898, 6 S.L.T. 224; *Hicks v. Hicks*, 1899, 6 S.L.T. 261; Conjugal Rights Act, 1861, 24 & 25 Vict. c. 86, sec. 15. This course is apparently incompetent in the Sheriff Court, *Baxter v. Baxter*, 1919, 35 Sh. Ct. Rep. 111; *Mackenzie v. Mackenzie*, 1919, 35 Sh. Ct. Rep. 170. See also *Christie v. Christie*, 1919, S.C. 576; 56 S.L.R. 513; 1919, 2 S.L.T. 53.

Section 5 (2) as amended appears still to leave unsolved some of the difficulties referred to in *Low v. Low*, 1908, 16 S.L.T. 352; *M'Donald v. M'Donald*, 1908, 24 Sh. Ct. Rep. 271; *Samuel v. Samuel*, 1909, 1 S.L.T. 245; 25 Sh. Ct. Rep. 99; *Docherty v. Docherty*, 1908, 24 Sh. Ct. Rep. 120; *Whillans v. Whillans*, 1908, 39 Sh. Ct. Rep. 45.

4. ACTIONS OF INTERIM ALIMENT

The Act of 1913 by its alteration of section 5 (2) of the Act of 1907 has removed all doubt as to the competency of the Sheriff entertaining an action concluding solely for interim aliment. It is therefore competent to grant a decree for aliment of which the payment is to run until

the pursuer raises another action, which she may do either in the Court of Session or the Sheriff Court.

In actions of interim aliment decree can now only be granted after proof (rule 23 as amended by Act of 1913).

A form of writ is given on p. 448.

5. ACTIONS FOR REGULATING THE CUSTODY OF CHILDREN

The phraseology of section 5 (2) of the Act of 1907 led to the conclusion that the Sheriff's power of "regulating the custody of children" could only be exercised as ancillary to an action of separation and aliment. The alteration effected by the Act of 1913 has placed this matter on an independent footing by expressly declaring the competency of "actions for regulating the custody of children."

Conflicting views were entertained by different Sheriffs as to what applications in regard to children were included in the description of "actions for regulating the custody of children." The question has now been settled by *Murray v. Forsyth*, 1917, S.C. 721; 54 S.L.R. 558; 1917, 2 S.L.T. 83, in which it was held that the above quoted provision enlarged the former common law powers of the Sheriff, and enabled him to deal with "permanent" as well as "temporary" custody, but that when the case involved questions under the Custody of Children Act, 1891, it should be remitted to the Court of Session. See *Samson v. Samson*, 1922 S.L.T. (Sh. Ct.) 34; and *Darwins v. Muir*, 1923 S.L.T. (Sh. Ct.) 11; 39 Sh. Ct. Rep. 45.

A form of writ is given on p. 457.

6. REMOVAL OF THE ABOVE CAUSES TO THE COURT OF SESSION

It is provided by section 5 of the Act of 1907 as altered by the Act of 1913 that any action mentioned in the second subsection, *i.e.* any of the actions dealt with above, may be remitted to the Court of Session. This remit may take place (a) at any stage of the cause; (b) on cause shown by either of the parties; (c) by the Sheriff *ex proprio motu*.

See p. 236 as to these removals.

It is not easy to figure grounds sufficient to justify the removal of actions of aliment between parent and child, and actions of interim aliment. In all cases, there must exist some special reason in the particular action, *Dunbar v. Dunbar*, 1912, S.C. 19; 49 S.L.R. 16; 1911, 2 S.L.T. 349.

7. ENFORCEMENT OF DECREE FOR ALIMENT BY IMPRISONMENT

In addition to the ordinary diligence competent on a decree for aliment in common with all ordinary decrees for payment, there is, in certain defined circumstances, the power to enforce such a decree by the personal diligence of imprisonment. This diligence does not proceed directly on the decree; a special warrant has to be obtained.

Civil Imprisonment (Scotland) Act, 1882, sec. 4; *Glenday v. Johnston*, 1905, 8 F. 24; 43 S.L.R. 38; 13 S.L.T. 467; *Whiteford v. Gibson*, 1899, 7 S.L.T. 233.

The application for imprisonment is competent only when the following requisites are present:—

(1) A decree by a competent Court.

The statute would not cover an extract registered bond, *M'Gechie v. Cameron*, 1897, 13 Sh. Ct. Rep. 357.

(2) An expired charge.

The charge ought not to bear "under pain of imprisonment," *Whiteford v. Gibson*, 1899, 7 S.L.T. 233; *Torbet v. Morrison*, 1902, 18 Sh. Ct. Rep. 183.

(3) Wilful failure of the defender to pay, within the days of charge, the aliment and expenses decerned for.

Each termly payment forms a separate debt, on which a separate warrant may pass, *Walker v. Bryce*, 1881, 9 R. 249; 19 S.L.R. 188.

Imprisonment for arrears was held competent, *Cain v. M'Colm*, 1892, 19 R. 813; 29 S.L.R. 735; *M'Phail v. Manarie*, 1898, 14 Sh. Ct. Rep. 176. But see *Glenday v. Johnston*, *supra*.

Offer to maintain an illegitimate child may be a relevant objection to granting warrant for imprisonment, *Wilson v. Lindsay*, 1893, 1 S.L.T. 272.

(4) The application must be by the creditor in the sums decreed for.

It is not competent to a Parochial Board which has advanced the aliment, *Tevendale v. Duncan*, 1883, 10 R. 852; 20 S.L.R. 558; *Mackay v. Resolis P. C.*, 1899, 1 F. 521; 36 S.L.R. 405; 6 S.L.T. 315; nor to an agent disburser holding a decree for expenses, *Bulloch v. Pollock*, 1887, 3 Sh. Ct. Rep. 249.

The application for a warrant for imprisonment may be in the form of the ordinary initial writ, but a minute endorsed on the decree or lodged in the process is sufficient. Forms are given on pp. 493 and 494.

A deliverance is pronounced appointing a diet for disposing of the application and ordering intimation thereof to be made on a short *induciæ*. Act of 1882, sec. 4.

The application and warrant has to be served on the debtor, *Cook v. Wallace & Wilson*, 1889, 16 R. 565; 26 S.L.R. 428; and it may often be not advisable, though it is not incompetent, to serve by post.

If the debtor fails to appear, warrant to imprison is granted. If he appears and establishes that, since the commencement of the action in which the decree was pronounced, he has not possessed, or been able to earn, means to pay what is due, or so much as the Sheriff may consider reasonable, the application will be refused. If the debtor fails so to prove, the application will be granted, and the debtor ordered to be incarcerated for any period not exceeding six weeks, unless the debt and expenses, or such instalments as the Sheriff may appoint, are sooner paid. Act of 1882, sec. 4.

The proceedings are conducted summarily, without any record. The application must not be continued over a long period.

Cain v. M'Colm, 1892, 19 R. 813; 29 S.L.R. 735. There is no appeal against the Sheriff's deliverance granting, or refusing to grant, the warrant, *Strain v. Strain*, 1886, 13 R. 1029; 23 S.L.R. 739; but see *Crosbie v. Crosbie*, 1902, 4 F. 945; 39 S.L.R. 741; 10 S.L.T. 156, where appeal on ground that Sheriff had not exercised his discretion was entertained (question as to Sheriff's jurisdic-

tion, debtor domiciled in England); *Christie v. Lowden*, 1890, 6 Sh. Ct. Rep. 140 (no appeal from Sheriff-Substitute to Sheriff). Suspension is the remedy competent to the debtor.

It has been held that the expenses of the application cannot be awarded, *Strain v. Strain*, 1888, 4 Sh. Ct. Rep. 125.

A warrant of imprisonment may be granted of new, at intervals of not less than six months. The creditor is not required to aliment the debtor in jail. Act of 1882, sec. 4 (6).

IX. SEQUESTRATION FOR RENT

By the action of sequestration a landlord (1) makes the effects in the subjects let which are subject to his right of hypothec, available for the past due rent; or (2) attaches them in security for the rent current and to become due.

The crave is for (a) sequestration of the effects in security or in payment, as the case may be; (b) warrant of sale of the sequestrated effects; (c) order to replenish if insufficient effects are left after sale; (d) ejection of the tenant on failure to replenish; (e) warrant to re-let the subjects; and (f) an ordinary decree for payment of any balance of rents which may remain due.

The rules dealing with procedure in sequestration for rent are Nos. 104 to 109.

A form of writ is given on p. 466.

Sequestration in security will only be granted on specific averments that the tenant is *vergens ad inopiam*, or is removing effects in breach of the landlord's hypothec, or that the hypothec is otherwise endangered, *Donald v. Leitch*, 1886, 13 R. 790; 23 S.L.R. 588.

Sequestration in security is taken at the applicant's risk, and, as a rule, if the rent is duly paid, at his own expense, *Nicol v. Mercer*, 1902, 10 S.L.T. 142; 18 Sh. Ct. Rep. 253; *Sinclair v. Morison*, 1902, 18 Sh. Ct. Rep. 254; *Kilburn v. Wilson*, 1903, 19 Sh. Ct. Rep. 249.

Upon presentment of the writ, sequestration and warrant to inventory and secure the effects is granted in the deliverance containing the warrant of service. Rule 105. This deliverance must be signed by the Sheriff or Sheriff-Substitute. Rule 7. It is carried into effect by

the officer inventorying the effects and serving the writ on the defender. The inventory is appended to the writ along with the execution of service.

All warrants to sequestrate, inventory, sell, eject or relet are held to include authority to open shut and lockfast places for the purpose of carrying the warrant into execution. Rule 105.

A warrant to carry back effects removed in breach of the right of hypothec may be granted on cause shown. A crave for this warrant may be included in the writ, or a separate minute may be endorsed thereon.

A form is given on p. 468. *Am28*

This minute should be intimated to the defender and also to the party in whose custody the effects are, *Johnston v. Young*, 1890, 18 R. (J.C.) 6; 28 S.L.R. 30; *Gray v. Weir*, 1891, 19 R. 25; 29 S.L.R. 58; *M'Lauchlin v. Reilly*, 1892, 20 R. 41; 30 S.L.R. 81. The warrant to carry back is granted *periculo petentis*, *Jack v. Black*, 1911, S.C. 691; 48 S.L.R. 331; 1 S.L.T. 124.

A tenant who had supplied information for the inventory was held barred from alleging certain irregularities, *Taylor v. Mac-knight*, 1882, 9 R. 857; 19 S.L.R. 620; *Macdonald v. Mackessack*, 1888, 16 R. 168; 26 S.L.R. 124 (warrant to eject for failure to replenish suspended, as no time fixed); as to irregularities, see also *Mackenzie v. Paul*, 1895, 3 S.L.T. 71; *M'Donald v. Grant*, 1903, 11 S.L.T. 575; *Brown v. Halley*, 1895, 3 S.L.T. 22.

The Sheriff may at any stage appoint a fit person to take charge of the sequestrated effects, or may require the tenant to find caution that they shall be made forthcoming. Rule 109.

The defender may—(a) lodge a caveat against the sequestration being granted, in which case he will be heard before warrant is granted.

(b) Consign the rent sued for, or find caution therefor, and have the sequestration recalled.

Alexander v. Campbell's Trs., 1903, 5 F. 634; 40 S.L.R. 453; 10 S.L.T. 736.

(c) Enter appearance, after which the ordinary procedure is followed out.

If the effects of a third party have been included in the sequestration, he can appear in the process and claim them, *Lindsay v. E. of Wemyss*, 1872, 10 M. 708; 44 J. 389; *Hoare v. Mackay*, 1905, 13 S.L.T. 588; see also *M'Intosh v. Potts*, 1905, 7 F. 765; 42 S.L.R. 576; 13 S.L.T. 108.

The claimant lodges a minute in the process of sequestration craving that he be allowed to compare in the cause, and that the sequestration should be recalled as regards the effects belonging to him. A condescence of the facts should be appended, with note of pleas in law. As regards procedure and appeals, the minute initiates a separate cause, *Little v. McConnell*, 1910, S.C. 219; 47 S.L.R. 214; 1909, 2 S.L.T. 47. The application may also be made in the form of the ordinary petition, *Jack v. Waddell's Trustees*, 1918, S.C. 73; 55 S.L.R. 75; 1917, 2 S.L.T. 235.

A form of minute is given on p. 469.

When warrant of sale is granted, which, if the sequestration is in security, will not be until the term of payment is come and bygone, the sale takes place at the sight of an officer of Court or other person named. Rule 106. A report of the sale is lodged within fourteen days thereafter, and the pursuer has also to lodge the roup roll or a certified copy thereof and a state of debt. Rule 107. The proceeds may be ordered to be consigned. If the subjects have been displenished a minute is lodged craving an order to plenish, failing which, warrant to eject and re-let will be granted.

A form of minute is given on p. 468.

In the interlocutor approving of the report of sale, or by separate interlocutor, the Sheriff gives decree for any balance of rent remaining due. Rule 108. This decree is extracted and diligence done thereon in common form. Rule 104.

All sequestrations have to be entered in a register kept by the Sheriff-Clerk. Hypothec Amendment Act, 1867, 30 & 31 Vict. c. 42, sec. 7.

X. REMOVINGS AND EJECTIONS

By the process of removing, using the term "removing" in its strictly proper sense, a tenant whose right of occupation has come to an end is judicially warned to

remove from the subjects occupied by him, and on his failure to obey the order of the Court to remove is ejected from the subjects.

By the process of ejection, using the term "ejection" in its strictly proper sense, a person occupying heritable subjects without any right or title is ejected therefrom.

Such actions—removings and ejections—were always competent in the Sheriff Court, by virtue of the common law jurisdiction, but they were also regulated to some extent by statute.

Interdict is not a competent process for effecting the removal of a tenant, but is a competent remedy to prevent the reinstatement of a removed tenant, *Boswell's Trs. v. Pearson*, 1886, 24 S.L.R. 32; *Anderton v. Law*, 1911, 27 Sh. Ct. Rep. 87.

The terms "removing" and "ejection" are frequently but incorrectly used indiscriminately. "Ejection" may either apply to the diligence for giving effect to a "removing," or it may mean an independent action. It may also mean the actual carrying out of the removing of the tenant, whether there has been any previous action or not. The confusion in the use of the terms has not been ended by the Act of 1907.

The subject of removings and ejections is now dealt with by the Act of 1907 in sections 34 to 38 and rules 110 to 122, the only alteration effected by the Act of 1913 being upon rules 119 and 121 in regard to caution for violent profits in actions termed by the statute "summary removings."

The Act of 1907, in dealing with jurisdiction, enacts that the jurisdiction of the Sheriff is to extend to and include "actions relating to questions of heritable right or title . . . including all actions of declarator and removing, whether at the instance of a superior against a vassal, or of a landlord against a tenant" (Act of 1907, sec. 5 (4)).

By the interpretation clause, sec. 3 (b) and (c), "tenant" includes sub-tenant, and "lease" includes sub-lease.

Actions of removing do not frequently involve a question of "heritable right or title" in the proper meaning of the term, and it is not apparent why these actions were specially mentioned in this category.

Actions relating to questions of heritable right and title of subjects above a certain value may be removed to the Court of Session under sec. 5 (a), and while actions of irritancy and removing are included by that section in "actions relating to questions of heritable right or title," it is difficult to define what actions would be held to fall under this rule.

The action of removing is a form of process which is available either to (a) a superior against a vassal, (b) a landlord against his tenant, or (c) a proprietor or tenant of heritage against an occupant without any title to possess.

A feudalised title in the pursuer may be timeously produced before decree, *Mitchell v. Shanks*, 1923 S.L.T. (Sh. Ct.) 9; *Saxelby v. Calder*, 1923 S.L.T. (Sh. Ct.) 13.

1. IRRITANCY AND REMOVING BY A SUPERIOR AGAINST A VASSAL

This subject is included somewhat inappropriately in clauses dealing with the law of landlord and tenant. The Act of 1907, sec. 5 (4), expressly includes in the jurisdiction of the Sheriff "all actions of declarator of irritancy and removing," at the instance of a superior against a vassal.

Actions of declarator of irritancy *ob non solutum canonem*, and also actions of irritancy on account of the breach of stipulations in a lease, or at common law, are competent either in the Sheriff Court or the Court of Session. The Act of 1907, by rule 110, requires the pursuer to call as parties to the action the last entered vassal, and such heritable creditors and holders of postponed ground burdens

as are disclosed by a search for twenty years prior to the action.

The cost of the search is to be part of the expenses of the process. Rule 110. The term "ground burden" is new to our practice; "holders" and "postponed" require explanation. The "last entered vassal" presumably means the present infest proprietor.

2. REMOVINGS BY LANDLORD AGAINST HIS TENANT

Previous to the changes effected by the Act of 1907 actions of removing were classified as follows:—

1. Ordinary Removings.—These were actions of removing which became competent in view of the natural termination of the lease or tenancy. They were subdivided into the following:—

(1) Solemn removings, in which an action of removing required to be raised at least forty days before the term of removal from the subjects of the lease; and

(2) Summary removings, in which the action could be brought without the forty days intervening. Cases falling under the latter class were—

(a) cases where less formal notice was required; (b) cases under the Sheriff Court Act of 1838; and (c) cases where the tenant had impliedly or expressly bound himself to remove.

2. Extraordinary Removings.—These were actions of removing founded on irritancy either legal or conventional, and were competent at a period within the endurance of the lease.

The Act of 1907 provides (sec. 34) that nothing therein contained is to be construed to prevent proceedings under any lease in common form. This provision appears to mean that extraordinary removings are not affected by the Act, and that ordinary removings are still to be competent as before the Act.

The principal effect of the Act of 1907, therefore, concerns ordinary removings only, and may be summarised as follows :—

(a) It defines cases in which no application to the Court for removing or ejection is necessary. In this the Act adopts, with alterations, the procedure first sanctioned by the Sheriff Courts Act, 1853.

(b) It defines cases in which action forty days before the termination of the tenancy, *i.e.* solemn removing, is not necessary.

(c) It provides rules and forms as to the various requisite notices, and as to procedure in actions of removing under different conditions.

In the case of all removings the following general provisions apply :—

1. An action of removing may now be raised at any time (rule 110) provided—

(a) the tenant has bound himself to remove, in writing dated and signed within twelve months of the term of removal; or (b) if there is no such writing, provided intervals of the following duration respectively elapse between the notice of removal and the term of removal, *viz.* :—

(1) In the case of a lease for three years and upwards of lands exceeding two acres :—not less than one year and not more than two years. Rule 110 (a).

(2) In the case of a lease of such lands, written or verbal, from year to year or for less than three years :—not less than six months. Rule 110 (b).

The further provision of rule 110 (c) requiring forty days' notice in the case of (i) houses with or without land not exceeding two acres, (ii) land not exceeding two acres without houses, (iii) mills, (iv) fishings, (v) shootings, (vi) all other heritable subjects excepting land exceeding two acres and let for one year or more, is superseded, so far as regards subjects falling under the Agricultural Holdings

Act, 1923, by section 26 of that Act, which requires notice of one year or of six months, as the case may be.

The competency of removings and ejections is affected by the Agricultural Holdings (Scotland) Act, 1923, and the Crofters Holdings (Scotland) Act, 1886, in the cases to which these Acts apply.

The following are cases under the Crofters Act dealing with removings :—

Fraser v. Macdonald, 1886, 14 R. 181; 24 S.L.R. 156; *Macnab v. Campbell*, 1888, 15 R. 472; 25 S.L.R. 352; *Lord Abinger v. Cameron*, 1888, 15 R. 598; 25 S.L.R. 396; *Livingstone v. Beattie*, 1890, 17 R. 702; 27 S.L.R. 562; *Mackenzie v. Munro*, 1894, 22 R. 45; 32 S.L.R. 43; 2 S.L.T. 290.

2. Actions of irritancy and removing are to be raised in the Court of the jurisdiction and district where the property forming the subject in dispute is situated. Act, sec. 5.

What is evidently intended by the "subject in dispute" is the subject from which the defender is sought to be removed.

Removings even where there is no conclusion of irritancy will invariably be brought in the Court of the Sheriffdom where the subjects are situated.

Removings fall within the class of ordinary actions, *M'Gregor v. M'Kinnon*, 1916, 32 Sh. Ct. Rep. 3.

3. In any defended action of removing, the defender may be ordained to find caution for violent profits. Rule 110. The motion can be made as soon as appearance has been entered; and, if an order for caution is not implemented, decree of removal may be at once pronounced.

Violent profits include the damage done by the defender, and the profit the pursuer could have made out of the subjects, *Beresford's Trs. v. Gardner*, 1877, 4 R. 1091; 14 S.L.R. 590; *Heritable and General Assets Co. v. Asple*, 1919, 35 Sh. Ct. Rep. 14.

A proprietor who has sold the subjects has a title to sue a removing previous to the period of entry, *Grandison v. Mackay*, 1919, 1 S.L.T. 95.

4. The Act provides forms of the various notices required. The various removal notices required by the Act may be given by (a) a messenger-at-arms, (b) a sheriff-officer, or (c) by registered letter signed by the person

entitled to give the notice, or by his law agent or factor. If the notice is by messenger or officer, it is apparently necessary that it be served by delivery. The Citation Amendment Act of 1882 does not apply. If the notice is sent by post, it must be posted in time to admit of its being delivered at or prior to the last date upon which the notice must be given. It is addressed to the person entitled to receive the notice, and bears his particular address at the time if known, or if not known, then to his last known address. Rule 113. A certificate of the notice, or acknowledgment by the party, endorsed on the lease or letter of removal as the case may be, is declared "sufficient evidence that notice has been given." Rule 114.

5. Extract of a decree of removing could be issued forty-eight hours after its date under the A.S., 10th July, 1839, sec. 113. That Act of Sederunt has fallen with the repeal of the Sheriff Courts Act, 1838, and rule 85 of the Act of 1907 now applies, under which extract may be issued after seven or fourteen days, according to circumstances, or at such earlier date as the Sheriff may allow.

6. The period of charge is forty-eight hours. Sheriff Courts (Scotland) Extracts Act, 1892, sec. 7 (4).

7. If the charge to remove is not obeyed, it is enforced by ejection by an officer.

As to charge necessary, see *Macdonald v. Watson*, 1883, 10 R. 1079; 20 S.L.R. 727.

A decree of ejection should be carried out at once. Where decree to remove at Whitsunday had been obtained and the charge was not given for three weeks thereafter, objection was not sustained, *Taylor v. E. of Moray*, 1892, 19 R. 399; 29 S.L.R. 336.

8. A decree of removing is brought under review by suspension and not by appeal. Judicature Act, 1825, 6 Geo. IV. c. 120, sec. 44.

Fletcher v. Davidson, 1874, 2 R. 71; 12 S.L.R. 27.

The Act of 1907 does not make any alteration upon the method of review of a decree of removing, *Campbell's Trs. v. O'Neil*,

1911, S.C. 188; 48 S.L.R. 115; 1910, 2 S.L.T. 392. But section 44 of the Judicature Act does not apply to an interlocutory judgment allowing proof, *Stirling v. Graham*, 1920, S.C. 4; 57 S.L.R. 58; 1919, 2 S.L.T. 208. Where removing is refused the ordinary procedure by appeal applies, *Park v. Mood*, 1919, 1 S.L.T. 170.

1. Ejection without Application to Court for Removing or Ejection.

The Act defines certain cases in which no process to remove or to eject is necessary, but in which the tenant may be ejected without any decree to that effect being pronounced.

This power only applies to a holding of lands exceeding two acres in extent.

This procedure is competent in the following circumstances :—

(1) Where there is a probative lease specifying a term of endurance; or (2) where the tenant has granted a letter of removal, which may be in the Form I of the Act, holograph or attested by one witness.

In the above cases notice to remove in Form H of the Act has to be given to the tenant of the following duration :—(a) Six months if the lease is from year to year or for a period less than three years (sec. 34 (b)); (b) not less than one year, and not more than two years, if the lease is for three years or of longer duration (sec. 34 (a)). But (1) no notice is necessary if the letter of removal is dated and signed within twelve months before the date of removal or before the first ish; (2) the provisions as to notice do not apply to (a) stipulations in the lease as to resuming land, or (b) to subjects let for less than a year. Act, sec. 34.

Crichton Stuart v. Ogilvie, 1913, 2 S.L.T. 88.

The ejection is effected by “any sheriff-officer or messenger-at-arms of the sheriffdom within which such lands or heritages are situated.”

There is no such official as a messenger-at-arms of a sherifdom, and there is no previous reference to heritages.

The authority to the officer is :—

1. The lease or an extract thereof, or the letter of removal as the case may be; and

2. Authority in writing signed by the lessor or anyone in his right, or by his factor or law agent.

The officer is empowered “to eject such party in possession, his family, sub-tenants, cottars, and dependants, with their goods, gear, and effects” at the expiry of the term or terms of endurance of the lease. Secs. 34 and 35.

The removal or ejection is not competent after six weeks from the date of the latest ish. Act, sec. 34.

2. Application for Warrant to Eject without Antecedent Decree of Removal.

In certain cases an application for warrant to eject is competent without a decree of removal and a charge thereon. Such cases were under the former classification termed “summary removings,” and in the Act of 1907 this term is still retained, although confusion from the use of the term “summary” is created.

The cases to which this procedure is competent are the following :—

1. In the case of lands exceeding two acres in extent, where there is no written lease and where no letter of removal has been granted by the tenant. In this case the tenancy may be ended by written notice on either side given not less than six months before the determination of the tenancy. Sec. 36.

The notice is in Form H, p. 333, which may be altered when given by the tenant.

2. In the following subjects let for a year or more, viz. :—

(a) Houses with or without land attached not exceeding two acres in extent.

(b) Lands not exceeding two acres in extent let without houses.

(c) Mills.

(d) Fishings.

(e) Shootings.

(f) All other heritable subjects (excepting land exceeding two acres in extent).

In the case of the above-mentioned subjects notice of termination of the tenancy must be given by one or other of the parties.

The notice in Form J of the Act must be given at least forty days before either the 15th May or the 11th November, as the case may be, for the Whitsunday and Martinmas terms. Sec. 37. See form J, p. 333.

The notice founds an application for warrant for summary ejection. Sec. 37.

The Agricultural Holdings (Scotland) Act, 1923, sec. 26 requires notice of one year or six months, as the case may be, as regards subjects falling under that Act.

In the case of subjects falling under the Removal Terms (Scotland) Act, 1886, 49 & 50 Vict. c. 50; and the Removal Terms (Scotland) Act, 1886, Amendment Act, 1890, 53 & 54 Vict. c. 36, the term of removal is the 28th May and the 28th November for the Whitsunday and Martinmas terms respectively, but the notice has to be given forty days before the 15th May or 11th November, as the case may be, and must state the actual date of removal as the 28th of each month.

Warning served on tenant of shop and house at the shop was held good warning for both subjects, *Scott v. Cook*, 1886, 24 S.L.R. 34.

A notice which did not specify the date of removal, but only the term, was sustained in *Campbell's Trs. v. O'Neill*, 1911, S.C. 188; 48 S.L.R. 115; 1910, 2 S.L.T. 392.

The notice must specify the subjects, *Scott v. Livingstone*, 1919, S.C. 1; 56 S.L.R. 1; 1918, 2 S.L.T. 225. As to adherence to form see *Robertson v. M'Intosh*, 1922 S.L.T. (Sh. Ct. Rep.) 7; *Robertson v. Wilson*, 1922 S.L.T. (Sh. Ct. Rep.) 21. As to effect of notice referring to part of the subjects only, see *Gates v. Blair*, 1923, S.C. 430; 60 S.L.R. 261; 1923 S.L.T. 257.

Conflicting views appear to be held in cases decided in the

Sheriff Court as to the admission of any equivalent to written notice.

In the case first mentioned above, the Act of 1907, sec. 36, provides for the proprietor applying for "a summary warrant of ejection"; in the second case, sec. 37 empowers the proprietor "to apply to the Sheriff for a warrant for summary ejection in common form."

It has been held that these applications are in substance "removings," and that the term "action of ejection" still properly applies only to an action against a party who has no title to occupy, *Campbell's Trs. v. O'Neill, supra*.

3. Houses or other heritable subjects let for a shorter period than a year, irrespective of the amount of the rent or the nature of the subjects.

In the case of subjects let for a shorter period than a year, the Act of 1907 has provided a procedure marked by several special features. The proceeding is termed "a summary application for removing," and it is declared (sec. 38) that a decree pronounced in such "summary cause" shall have the full force and effect of a "decree of removing and warrant of ejection." The proceeding is, however, neither a "summary application" nor a "summary cause" in the technical sense in which these terms are used by the Act of 1907. It is a proceeding *sui generis*, and is regulated by rules 115 to 122 of the Act.

In this case notice has to be given equal to one-third of the whole period of the let, if the subjects are let for a period not exceeding four months; forty days' notice if the let exceeds four months. Act, sec. 38.

No special form of notice is given in the Act, but Form J may be adapted.

The foregoing provision is superseded as regards houses falling under the House Letting and Rating (Scotland) Act, 1911, 1 & 2 Geo. v. c. 53. If such houses are let for a period of more than three months, notice of forty days is required; if let for a period of three months or less,

notice equal to one-third of the period of let must be given; if let for a shorter period than one month, five days' notice is required. In all cases to which the last-mentioned Act applies there are also the further special enactments:—(a) there is a fixed day for the termination of the let, viz. the twenty-eighth day of a month, or in the case of houses let for less than a month, the let terminates upon a Monday at noon; (b) in the case of rent being seven days in arrear the let may be terminated on forty-eight hours' notice (House Letting and Rating (Scotland) Act, 1911, secs. 3, 4, and 5).

The peculiar features of procedure applicable to the case of subjects let for less than a year are as follows:—

1. A special form is provided for the initial writ—Form K, which was the form under the Sheriff Court Act of 1838, and which has been for some unknown reason preserved. It differs from the ordinary form now used in all other actions, and also from the summons in the small debt action to which it is allied. The form will be found on p. 333.

2. The action, according to sec. 38 of the Act of 1907, may be raised by “any person by law authorised,” a phrase expanded by rule 115 into “a proprietor or his factor, or any other person by law authorised to pursue a process of removing.”

3. The warrant of service is in the Form B (the form used in summary causes), and allows two days' *induciæ*. Unlike other warrants with shortened *induciæ*, it may be signed by the Sheriff-Clerk. Rule 116. The warrant or the service copy is sufficient warrant for citing witnesses. Rule 118.

4. The cause is to be conducted and disposed of in the summary manner in which proceedings are conducted under the Small Debt Acts. Rule 119.

The rule also bears that the action shall not be subject to review. This rule has, by an amendment of the Act

of 1913, been prefaced by the words "except as herein-after provided." Rule 121 allows in certain cases written answers to be lodged, and when such are lodged the normal procedure is followed.

5. If the defender fails to appear, the Sheriff may dispose of the case in absence, and in that event may give directions for preservation of the defender's goods and effects. Rule 117.

Presumably the Sheriff must give decree where there is no appearance, as in any other action.

6. If within three days, *i.e.* after the decree in absence, the defender satisfies the Sheriff that there was reasonable cause for his non-appearance, the Sheriff may re-hear the cause. If decree has been granted and not implemented, he may recal the decree on conditions as to expenses, and otherwise. Rule 117.

No explanations are given as to how this provision is to be followed out in practice. Probably the lodging of a minute within the period would keep the matter open.

7. When the defender finds caution for violent profits, or where such caution has been dispensed with, he is entitled to lodge written answers. Rule 121. In this event the cause is to be conducted as nearly as may be thereafter according to the procedure in ordinary actions of removing, and to be subject to review in common form. Rule 122.

The alteration effected by the Act of 1913 has superseded the decision in *Thomson v. Bent Colliery Co. Ltd.*, 1912, S.C. 242; 49 S.L.R. 181; 1 S.L.T. 53.

The result seems to be that if no answers are lodged the case remains subject to the rules applicable to small debt procedure. Rule 119 provides that in such case there is to be no right of appeal, but this would, no doubt, leave open the limited right of appeal which is competent in small debt actions. If answers are lodged, the case may be transferred to the ordinary Court, but, whether or not, there is by rule 122 "review in common form."

The words "review in common form" would ordinarily be read as referring to the ordinary rights of appeal, but in removings the "common form of review" is not applicable, the method being by

suspension, which is, no doubt, the form meant by the expression in the statute.

8. A special form of decree is provided — Form L, given on p. 334.

According to the form of the schedule the ejection is to be not sooner than a day specified. The direction of the schedule bears that there is to be stated whether the ejection is to be after a charge on such *induciæ* as may be deemed proper, or instantly. If the decree has been granted in absence, it would seem that at least three days must be allowed. In cases to which the House Letting and Rating Act, 1911, 1 & 2 Geo. v. c. 53, applies, not more than forty-eight hours' delay is competent, unless on special cause shown and upon caution or consignment.

Previous to the Act of 1907, a witness was not required to the service of a summons of ejection in the Small Debt Court, by virtue of a provision of the Citation Amendment Act, 1871. The action is now raised under the provisions of the Act of 1907, and a witness is therefore necessary in this as in other citations on a writ.

3. Removing before the Natural Termination of the Lease, i.e. Extraordinary Removing.

As already stated, the Act makes no specific changes as regards this process. To effect such a removing—an extraordinary removing, under the old classification—an ordinary action must in all cases be raised. This is appropriate in the following cases:—

1. In agricultural subjects where the tenant is two years in arrear of rent. C.A.S., L, xv., 4.

2. In agricultural subjects where the tenant is one year in arrear or deserts possession and leaves the ground unlaboured at the usual time of tilling, he may be required to find caution for arrears and for the rent of the next five years, failing which he will be removed. C.A.S., L, xv., 5.

The above provisions of the Codifying Act of Sederunt do not apply where the procedure set forth in section 25 of the Agricultural Holdings Act, 1923, is competent. Act of 1923, sec. 25 (3).

As to caution for violent profits, see *Oliver v. Weir's Trs.*, 1870, 8 M. 786; 42 J. 444; and Act of 1907, rule 110.

3. In cases in which the landlord's hypothec has been abolished, the landlord may raise an action whenever the tenant is six months in arrear of rent, and, failing payment of arrears, or security therefor and for the next year's rent, decree of removal and ejection will be granted. Agricultural Holdings (Scotland) Act, 1923, sec. 25 (1); Act of 1907, rule 110.

4. In cases in which a lease provides for a conventional irritancy in a specified event, an action to have the irritancy declared and for decree of removing is the proper remedy upon the occurrence of the event.

5. In cases of bankruptcy, or in other cases in which there has been irritancy of the lease and the landlord is entitled to remove the tenant.

Such cases are excepted from the provision of the Act of 1907, sec. 34.

3. EJECTION BY A PROPRIETOR OF A PERSON WHO HAS NO TITLE TO POSSESS

This is the case to which the "process of ejection" was, in the former classification, applicable. It was, and still is, the appropriate remedy against a person occupying subjects without having any right or title to do so. It falls under the common law jurisdiction of the Sheriff, and is not specifically dealt with in the Act of 1907. The action proceeds as an ordinary cause, with the normal rights of appeal. The writ may be in the form given on p. 470.

See as to competency of this process, *Gibson & Son v. Gibson*, 1899, 36 S.L.R. 522. Ejection is incompetent where a title to possess is founded on by the person in possession, *Walker v. Kerr*, 1917, S.C. 102; 54 S.L.R. 103; 1916, 2 S.L.T. 277 (question pending before Land Court); *Lowe v. Gardiner*, 1921, S.C. 211; 58 S.L.R. 230; 1921, 1 S.L.T. 44 (purchaser of heritage in possession but failing to pay price); *Scottish Supply Association v. Mackie*,

1921, S.C. 882; 58 S.L.R. 573; 1921, 2 S.L.T. 170; *Cooney v. Taylor*, 1922 S.L.T. (Sh. Ct.) 6; cf. *Brcadalbane v. Cameron*, 1923 S.L.T. (Sh. Ct.) 6.

A proprietor in personal occupation of subjects disposed in security, in default in payment of interest or principal may be ejected by the creditor. Heritable Securities (Scotland) Act, 1894, sec. 5. The rules of the Sheriff Court Act, 1907, as to removings do not apply to such an ejection, *Inglis' Trs. v. Macpherson*, 1910, S.C. 46; 47 S.L.R. 43; 1909, 2 S.L.T. 363; 1911, 48 S.L.R. 955; 2 S.L.T. 176; *Henderson v. Nelson*, 1913, 29 Sh. Ct. Rep. 233.

See as to ejection for failure to stock farm, *Macdonald v. Mackessack*, 1888, 16 R. 168; 26 S.L.R. 124.

As to ejection without a warrant, see *Sinclair v. Tod*, 1907, 15 S.L.T. 113.

As to competency of appeal, see *Clark v. Clarkes*, 1890, 17 R. 1064; 27 S.L.R. 620; *Barbour v. Chalmers*, 1891, 18 R. 610; 28 S.L.R. 446; and *Robb v. Brearton*, 1895, 22 R. 885; 32 S.L.R. 671; 3 S.L.T. 81.

4. EJECTION UNDER SMALL DEBT ACTS

This peculiar form of procedure, ancillary to sequestration for rent, is competent where, after a decree for rent obtained in the Small Debt Court, the tenant fails to plenish the subjects; see p. 284.

XI. MAILLS AND DUTIES

This is an ordinary action by a heritable creditor against the proprietor of, and the tenants in, the security subjects for payment to him of the rents due.

Recent cases as to competency are *Somerville v. Johnston*, 1899, 1 F. 726; 36 S.L.R. 537; 6 S.L.T. 365 (ground annual); *Nelson's Trs. v. Tod*, 1896, 23 R. 1000; 33 S.L.R. 727; 4 S.L.T. 80 (feu-duties); *Saxty v. Smith*, 1893, 1 S.L.T. 61 (no arrears of interest); *Smith's Trs. v. Chalmers*, 1890, 17 R. 1088; 27 S.L.R. 988 (proprietor in possession); *Dunbar v. Gill*, 1908, S.C. 1054; 45 S.L.R. 870; 16 S.L.T. 268 (subjects held on long lease); *M'Ara v. Anderson*, 1913, S.C. 931; 50 S.L.R. 713; 1913, 1 S.L.T. 490 (demand for payment previous to action); *Gibson v. Blair*, 1918, S.C. 353; 55 S.L.R. 300; 1918, 1 S.L.T. 235 (action raised before interest due); cf. *Graham's Trs. v. Dow's Tr.*, 1917, 2 S.L.T. 154; *Mercer v. Fryer*, 1917, 33 Sh. Ct. Rep. 299 (action at instance of postponed security holder).

An optional method of procedure was introduced by the Heritable Securities (Scotland) Act, 1894, 57 & 58 Vict. c. 44, sec. 3, which provides a form of petition, and makes it optional to the pursuer, instead of calling the tenants as defenders and serving each with a copy of the petition, to serve notices only in the form given in the Act. The ordinary procedure may still be followed out. Act of 1894, sec. 3. The Act of 1907 makes no special provisions in regard to this action, and presumably, while the action must be raised by the new form of writ, the method of procedure allowed by the Heritable Securities Act of 1894 is otherwise still competent.

On intimation, by registered letter, of the decree in the action, the tenants are obliged to make payment of the rents in the same way as if a decree had passed and a charge had been given according to the former practice. Act of 1894, sec. 3.

As to effect of decree, see *Robertson's Trs. v. Gardner*, 1889, 16 R. 705; *M'Naughton v. Scott*, 1913, 29 Sh. Ct. Rep. 83; *City of Glasgow Friendly Society v. Bruce*, 1916, S.C. 267; 53 S.L.R. 199; 1916, 1 S.L.T. 29.

Form of the writ and relative notices are given on p. 474.

XII. POINDING OF THE GROUND

By the action of poinding of the ground a creditor in a *debitum fundi*, such as a heritable security or a feu-duty, attaches the moveable effects which are on the subjects of his security for payment of his debt.

A form of the writ is given on p. 473.

The action of poinding of the ground has been held competent in the following circumstances:—

(a) Where owner of subjects not feudally infeft, *Mackenzie's Trs. v. Smith*, 1883, 20 S.L.R. 351.

(b) To a creditor who has obtained a decree of maills and duties, *Henderson v. Wallace*, 1875, 2 R. 272.

(c) Though term of payment not arrived, *Stewart v. Gibson's Trs.*, 1880, 8 R. 270; 18 S.L.R. 140.

(d) To a postponed bondholder, *Young's Trs. v. Hill's Trs.*, 1893, 1 S.L.T. 357.

The action has been held incompetent—

(a) Where moveables are not actually on subjects, *Urquhart v. Macleod's Trs.*, 1883, 10 R. 991; 20 S.L.R. 670.

(b) Where moveables are the property of third parties, *Nelmes v. Gillies*, 1883, 10 R. 890; 20 S.L.R. 576; *Thomson v. Scoular*, 1882, 9 R. 430; 19 S.L.R. 349.

(c) Where creditor held under an *ex facie* absolute conveyance, *Scottish Heritable Security Co. v. Allen, etc.*, 1876, 3 R. 333; 13 S.L.R. 207.

(d) To a creditor under a bond and assignation of a long lease, *Luke v. Wallace*, 1896, 23 R. 634; 33 S.L.R. 474; 3 S.L.T. 325.

(e) For arrears of feu-duties, where pursuer had conveyed superiority to a third party, *Scottish Heritages Co. v. N.B. Investment, etc., Co.*, 1885, 12 R. 550; 22 S.L.R. 361.

Two persons holding separate securities should not combine in one action, *Douglas v. Tait*, 1886, 12 R. 10; 22 S.L.R. 18.

The procedure is the same as in an ordinary petitory action, with the following points of difference:—

1. The action is of the nature of diligence, and frequently it may be more judicious to execute the writ by an officer than by post.

2. A warrant to inventory the effects is granted upon presentation of the writ. This warrant is carried out by the sheriff-officer in the same way as a poinding, except that the effects are not valued. Service of the writ creates a nexus on the effects.

3. Unless for expenses, no personal decree is granted, and no charge is necessary.

4. The warrant is carried out by sale, as in the case of effects poinded under an ordinary decree.

See *Kennedy v. Buik*, 1852, 14 D. 513.

As to effect of poinding of the ground in competition with other parties, see Bankruptcy Act, 1913, sec. 114; *Lyons v. Anderson*, 1880, 8 R. 24; 18 S.L.R. 5; *Royal Bank v. Bain*, 1877, 4 R. 985; *Athole Hydropathic Co. v. Scottish Provincial Assurance Co.*, 1886, 13 R. 818; 23 S.L.R. 570; *Miller's Trs. v. Millar & Sons' Trs.*, 1886, 13 R. 543; 23 S.L.R. 363; *Scottish Union, etc., Insurance Co. v. James*, 1886, 13 R. 928; 23 S.L.R. 635; *N.B. Property Investment Co. v. Paterson*, 1888, 15 R. 885; 25 S.L.R. 641.

XIII. PROCEEDINGS UNDER THE HERITABLE SECURITIES (SCOTLAND) ACT, 1894

Under the Heritable Securities (Scotland) Act, 1894, 57 & 58 Vict. c. 44, the following applications to the Sheriff of the county in which lands disposed in security, or any part thereof, are situated, whatever be their value, are competent :—

1. Application by a creditor in possession of security subjects, for warrant to grant lease for a period exceeding seven years and not exceeding twenty-one years, for heritable property in general, and thirty-one years for minerals. Act of 1894, sec. 7.

The writ is served on the proprietor and other heritable creditors, and such intimation and inquiry made as the Sheriff thinks proper. If satisfied that the lease is expedient for the beneficial occupation of the lands, the Sheriff may approve of it. Act of 1894, sec. 7.

2. Application by a creditor who has exposed the security subjects for sale at a price not exceeding the sum due to him and to any prior and *pari passu* creditors, and has failed to find a purchaser, for decree finding that the debtor has forfeited his right of redemption, and that the creditor is vested in the lands as absolute proprietor. Act of 1894, sec. 8.

A form of the writ is given on p. 463.

Service of the writ and such intimation and inquiry as may be necessary is made.

The decree, in the form of Schedule D annexed to the Act of 1894, contains a description of the subjects, and is recorded in the Register of Sasines. The Sheriff may, instead of granting decree as above, appoint the subjects to be re-exposed for sale at an upset price fixed by him, and the creditor may be the purchaser. Act of 1894, sec. 8.

Lusk v. Tait, 1889, 15 Sh. Ct. Rep. 249.

3. Application by creditor holding *pari passu* security

for warrant to sell, when the consent of the other creditors cannot be obtained. Act of 1894, sec. 11.

The interlocutor of the Sheriff who pronounces any of the above orders or decrees is not subject to review except—(a) as to questions of title, and (b) where the principal sum due under the security exceeds £1000. Act of 1894, sec. 12.

As to competency of appeal from Sheriff-Substitute to Sheriff, see *Webb's Trs. v. Reid*, 1906, 14 S.L.T. 323 and *Lyon's Trs. v. Smith*, 1922 S.L.T. (Sh. Ct. Rep.) 42; 37 Sh. Ct. Rep. 251.

The Sheriff may award expenses, or direct them to be treated as part of the expenses of the sale.

As to provisions of the Act regarding actions of ejection, see p. 201; and of maills and duties, see p. 202.

A purchaser of subjects sold under the provisions of the Act is not to be affected by any irregularity in the proceedings under the Act. Sec. 10. This clause was held to cover objections to the execution of the petition, *Sutherland v. Standard, etc., Assurance Co.*, 1902, 4 F. 957; 39 S.L.R. 769; 10 S.L.T. 178; also questions as to regularity of advertisements, *M'Donald v. Winkler*, 1903, 10 S.L.T. 551; see also *Forbes v. Pollock*, 1900, 16 Sh. Ct. Rep. 329.

The foregoing applications under this Act when appearance for the defender is not made, should be remitted to a conveyancer for inquiry and report before the prayer is granted.

4. Application by creditor for warrant to intimate demand for payment, under Titles to Land Consolidation (Scotland) Act, 1868, to the debtor at the office of the Keeper of the Record of Edictal Citations in cases—(a) where the debtor has died and the name and address of the heir cannot be ascertained; (b) where the creditor cannot ascertain the debtor's address or whether he is alive; (c) where the creditor cannot ascertain the address of the person legally entitled to receive the intimation. Act of 1894, sec. 16.

XIV. APPOINTMENT OF JUDICIAL FACTORS

The appointment of judicial factors in the Sheriff

Court in the case of pupils, minors, and insane persons, is regulated by the Judicial Factors (Scotland) Act, 1880, 43 & 44 Vict. c. 4, and C.A.S., L, viii. The power to appoint judicial factors on the estates of persons deceased has been conferred, to a limited extent, by the Bankruptcy (Scotland) Act, 1913, sec. 163, 3 & 4 Geo. v. c. 20.

The judicial factors that can be appointed in the Sheriff Court are—(1) factor *loco tutoris*; (2) *curator bonis* (Act of 1880, secs. 3 and 4); and (3) judicial factor on the estate of a person deceased (Bankruptcy (Scotland) Act, 1913, sec. 163).

1. Factors loco tutoris and Curators bonis.

The yearly value of the heritable and moveable estate of the ward must not exceed £100 in all. Sec. 4.

The Sheriff has to make a finding as to the value in the interlocutor appointing the factor, which finding is declared final. To ascertain the value, the rent of the heritage as entered in the Valuation Roll for the time, and yearly interest on the estimated value of the moveable estate at four per cent., is taken; or, if the value cannot be so ascertained, the estate is valued in such manner as the Sheriff thinks fit. Act of 1880, sec. 4.

The provisions of the Pupils Protection Act, 1849, 12 & 13 Vict. c. 51, and of the other Acts applicable to factors appointed in the Court of Session, are declared to apply to factors appointed in the Sheriff Court. Act of 1880, sec. 4 (4). See also Judicial Factors (Scotland) Act, 1889, 52 & 53 Vict. c. 39.

All factors, including factors appointed in the Commissary Court for the purpose of confirmation, are subject to the Accountant of Court, *Accountant of Court*, 1907, S.C. 909; 44 S.L.R. 643; 15 S.L.T. 34.

(1) **Application for Appointment.**—The application is made by writ presented to the Sheriff of the county in which the pupil, minor, or insane person is resident.

The residence referred to is the usual residence, not the place where the pupil, minor, or insane person might be at the time, *Henry*, 1896, 12 Sh. Ct. Rep. 121; *M'Cormack*, 1897, 13 Sh. Ct. Rep. 184.

Application for a *curator bonis* was granted at the instance of the incapax, *A. B.*, 1903, 16 S.L.T. 557.

The writ may be in the form given on p. 490.

The subsequent proceedings are as nearly as may be in the form and manner in which similar proceedings are carried on before a Lord Ordinary. Act of 1880, sec. 4.

A petition for appointment of a new factor must be presented in the Court in which the original appointment was made. Rule of Court, under Act of 1880, sec. 4 (7); *Penney*, 1893, 20 R. 573; 30 S.L.R. 527. The application is disposed of summarily, and does not fall asleep by lapse of year and day. C.A.S., L, viii., 1, 2.

(2) **Service.**—The Sheriff orders intimation and service of the application—(1) upon the walls of the Sheriff Court; (2) to the Accountant of Court; (3) to such interested parties as the Sheriff may think proper; and (4) by advertisement, when considered necessary. If there has been previous application relating to the same estate, the Accountant reports this to the Sheriff-Clerk. C.A.S., L, viii., 4, 5.

The service may be by officer or by registered letter. Service on the insane person should not be executed by post but should be by personal citation.

If answers are lodged, parties will be heard thereon, and such inquiry made as the Sheriff thinks proper. If answers are not lodged, or on their being repelled, the Sheriff appoints a factor with the usual powers, he finding caution before extract.

Caution must be found to the satisfaction of the Sheriff-Clerk within three weeks, unless the Sheriff, on cause shown, allows further time. If caution is not found within the time allowed, the appointment *ipso facto* falls. The bond of a guarantee company may be authorised by the Sheriff. C.A.S., L, viii., 6, 8.

A married woman may be appointed curator, *Crombie v. Crombie*, 1920, 36 Sh. Ct. Rep. 109.

As to factor's power before extract, see *Calver v. Howard, Baker & Co.*, 1894, 22 R. 1; 32 S.L.R. 3; 2 S.L.T. 242.

Service on the insane person may be dispensed with, where there is evidence that it would be detrimental to his health, *Buyers*, 1910, 2 S.L.T. 201.

Advertisement in the public papers is in some sheriffdoms ordered as matter of course. It is thought that this should be done only where there is special reason.

(3) Procedure to obtain Special Powers.— The factor submits an application in writing to the Accountant, who inquires, and reports his opinion to the Sheriff. After intimation and service and such procedure as may be necessary, the Sheriff disposes of the application. Special powers will not be granted until the factor has extracted the decree of his appointment. C.A.S., L, viii., 11.

(4) Discharge of Factor.— Application is made by writ lodged in the process. This is ordered to be intimated and served, and after a report thereon by the Accountant to the Sheriff, the application is disposed of. C.A.S., L, viii., 12. A form of writ is given on p. 490.

(5) Appeals.— (a) An appeal is competent from the Sheriff-Substitute to the Sheriff where there would be an appeal from the Lord Ordinary to the Inner House if the application had been made in the Court of Session. Judicial Factors (Scotland) Act, 1880, sec. 4 (5). Appeal would thus be competent only against an interlocutor finally disposing of the petition on the merits.

Under the Distribution of Business Act, 1857, 20 & 21 Vict. c. 56, sec. 6, an appeal should be taken within eight days of the interlocutor, but this, so far as applicable to Sheriff-Court procedure, is probably superseded by the time prescribed by the Act of 1907.

Paul v. Logan, 1902, 18 Sh. Ct. Rep. 223.

Where the Sheriff refused an application as incompetent an appeal was held competent, *Penney v. Scott*, 1894, 22 R. 5; 32 S.L.R. 9; 2 S.L.T. 241.

The before-mentioned rights of appeal would appear not to be affected by the Act of 1907. See secs. 7 and 28 of the Act of 1907.

(b) Any person interested may apply either to the Sheriff or to the Court of Session for recal of any appointment made under the Act. Act of 1880, sec. 4 (9).

As to procedure in petition for removal of factor, see *Forrest v. Forrest's Factor*, 1898, 6 S.L.T. 68.

(c) A decree in absence cannot be opened up after the lapse of twelve months. Act of 1880, sec. 4 (8). In view of the immediately preceding provision (b) the meaning of this enactment is not apparent.

2. Judicial Factors on Estates of Deceased Persons.

The power to appoint judicial factors on the estate of a deceased person is conferred on the Sheriff by sec. 163 of the Bankruptcy (Scotland) Act, 1913. The essential features are:—

(1) The appointment of factor is only competent in the Sheriff Court where the assets of the deceased “are estimated not to exceed five hundred pounds.”

(2) It is competent only where the deceased has left no settlement appointing trustees or other parties having power to manage his estate or part thereof, or in the event of such parties not accepting or acting.

(3) The application may be made by (a) one or more creditors of the person deceased, or (b) persons having an interest in the succession.

(4) The writ is presented in the Sheriffdom (a) within which the deceased resided or carried on business during the year immediately preceding the date of the petition, or (b) within which heritage belonging to the deceased at the time of his death is situated.

(5) Such intimation has to be made “to the creditors of the deceased and other persons interested as may be considered necessary.”

The factor is to administer the estate subject to the supervision of the Accountant, in accordance with the Judicial Factors (Scotland) Acts, 1880 and 1889, and

relative Acts of Sederunt, and in case of an insolvent estate the division is to be in accordance with the Bankruptcy Act, 1913.

A suggested form of writ is given on p. 491.

XV. SUSPENSION

The only process of suspension competent in the Sheriff Court is that defined by the Act of 1907, sec. 5 (5), and rule 123. Sec. 5 (5) provides that the jurisdiction of the Sheriff is to extend to and include "suspension of charges or threatened charges upon the decrees of Court granted by the Sheriff, or upon decrees of registration proceeding upon bonds, bills, contracts, or other obligations registered in the Books of the Sheriff Court, in the Books of Council and Session or any others competent, where the debt, exclusive of interest and expenses, does not exceed £50." Rule 123 repeats this provision with different phraseology, and includes a charge on "letters of horning following on such decree," while it omits any reference to a threatened charge.

The provisions of the statute and the relative rules 123 to 125 have left this matter in considerable confusion.

The direction of rule 124 is that upon caution being found for the sum charged for, interest and expenses, and a sum fixed by the Sheriff in respect of expenses to be incurred in the suspension, diligence may be sisted, and intimation and answers ordered.

By rule 123 it is provided "the person so charged may apply in the Sheriff Court of his domicile for suspension on caution of such charge and diligence." There is no reference to caution in sec. 5 of the Act. The rule evidently requires caution to be found as a condition of obtaining a warrant of citation on the application, and allows no room for the exercise of the Sheriff's discretion.

Section 28 (5) of the Act makes no provision as to the form of the application, and but for the words above quoted

in rule 123, the ordinary rule would hold that the application must be brought in the Court which had jurisdiction over the defender. It is thought that rule 123 does not make this incompetent, but that its effect is to make the action also competent in the Court of the complainer's domicile. This, it is thought, means his domicile arising from residence, and not the Court to which the suspender may have been convened by virtue of the various adventitious grounds of founding jurisdiction.

As the procedure enjoined in rule 123 applies only where a charge has been given, the anomalous result appears to be, that if the application is for suspension of a threatened charge, the Sheriff would be free to exercise a discretion as to caution.

The scope of the exercise of the power of suspension cannot be readily defined.

The cause is to be disposed of in a summary manner.
Rule 124.

See *Summerlee Iron Co. v. Duff*, 1920, S.C. 291; 57 S.L.R. 222; 1920, 1 S.L.T. 153.

The judgment of the Sheriff-Substitute on the competency or regularity of suspension proceedings may be appealed to the Sheriff, whose judgment thereon is declared to be final. Rule 125.

Wilsons and Clyde Coal Co. Ltd. v. Cairnduff, 1911, S.C. 647; 48 S.L.R. 500; 1 S.L.T. 369.

A form of application is given on p. 492.

XVI. APPLICATION FOR WARRANT TO REGISTER MARRIAGE

Within three months after having contracted an irregular marriage, the parties may present an application to the Sheriff of the county in which the marriage was contracted, for warrant to have the marriage registered. One of the parties must have his or her usual residence in Scotland, or have lived there for twenty-one days preceding the date of the marriage. In the procedure usually

followed, the parties declare themselves to be man and wife, in writing, before two witnesses, and the declaration is appended to the application for warrant to register the marriage. The witnesses, along with the parties, thereafter attend before the Sheriff, their depositions are taken, and warrant is granted.

Marriage (Scotland) Act, 1856, 19 & 20 Vict. c. 96, sec. 2.

Forms of the declaration and the application to register are given on pp. 494 and 495.

CHAPTER XV.

APPEALS FROM SHERIFF-SUBSTITUTE TO SHERIFF

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I. APPEALS COMPETENT FROM SHERIFF-SUBSTITUTE TO SHERIFF

1. Summary Causes

1. Appeal against Final Interlocutor.—Where the evidence has been recorded, there is appeal to the Sheriff against the judgment of the Sheriff-Substitute upon fact and law. Where the evidence has not been recorded, there is appeal on findings in law only. Act, sec. 8.

2. Appeal against Interlocutory Judgments.—The section of the Act above referred to appears to deal only with a final judgment of the Sheriff-Substitute, and the Act makes no express provision as to appeal against an interlocutor in a summary cause falling within the description of interlocutory judgments. Sec. 27 of the Act is, however, not limited in its application to non-summary causes, and, along with the relative rules, except in so far as they are inconsistent with the terms of section 8 of the Act, would appear to embrace interlocutory judgments in summary causes.

The procedure in appeals in ordinary causes applies to appeals from the Sheriff-Substitute to the Sheriff in summary causes.

As to what constitute “final” and “interlocutory” judgments see *infra*.

2. Ordinary Causes

1. Appeal against Final Interlocutor.—An appeal from the Sheriff-Substitute to the Sheriff is competent against a final judgment. Sec. 27. A final judgment is defined as “an interlocutor which by itself, or taken along with previous interlocutors, disposes of the subject-matter of the cause, notwithstanding that judgment may not have been pronounced on every question raised, and that expenses found due may not have been modified, taxed, or decerned for.” Act, sec. 3 (*h*).

Unless the question of expenses has been decided, the judgment is not “final” as regards appeal.

See cases dealing with the interlocutors which fall under the description of “final judgment” in reference to appeals to Court of Session, p. 227.

2. Appeal against Interlocutory Judgments.—Appeal is also competent against interlocutors of the following description, viz. :—

(1) An interlocutor granting or refusing interdict, interim or final. Sec. 27 (*a*).

An interim interdict, though appealed, is binding till recalled. Sec. 29.

(2) An interlocutor granting interim decree for payment, other than a decree for expenses. Sec. 27 (*b*).

This would include an interlocutor granting warrant for payment of a consigned fund, *Baird v. Glendinning*, 1874, 2 R. 25; 12 S.L.R. 11; *Sinclair v. Baikie*, 1884, 11 R. 413; 21 S.L.R. 275.

A finding as to expenses could, however, be appealed against if it is included in an interlocutor which is otherwise appealable, *Nelson v. Wilson & Son*, 1913, 29 Sh. Ct. Rep. 90.

(3) An interlocutor making an order *ad factum præstandum*. Sec. 27 (*b*).

An order to carry back hypothecated furniture and consign was held appealable, *Menzies and Others v. Templeton*, 1896, 12 Sh. Ct. Rep. 323; so also an interlocutor recalling arrestments, *Kennedy v. Kennedy*, 1911, 27 Sh. Ct. Rep. 71. But see otherwise, *M'Garra v. M'Brierley*, 1917, 33 Sh. Ct. Rep. 283.

(4) An interlocutor sisting an action. Sec. 27 (*c*).

This would include an interlocutor indirectly, or by implication effecting a sist of process, *Horn & Co. v. Tangyes Ltd.*, 1906, 8 F. 475; 43 S.L.R. 362; 13 S.L.T. 824.

(5) An interlocutor allowing or refusing or limiting the mode of proof. Sec. 27 (d).

The statute expressly excepts an interlocutor fixing a diet for jury trial. Sec. 27 (d). It would include an interlocutor of new allowing proof, *Kinnes v. Fleming*, 1881, 8 R. 386; 18 S.L.R. 245.

This would not cover an interlocutor ordering production of accounts, *Lamont & Co. v. Dublin, etc., Steam Packet Co.*, 1908, S.C. 1017; 45 S.L.R. 806; 16 S.L.T. 216; nor granting diligence for recovery of documents, *Dick v. Blairgowrie Town Council*, 1911, 27 Sh. Ct. Rep. 243; but it apparently would apply to an interlocutor refusing recovery, *Thomson & Co. v. Bowater & Sons*, 1918, S.C. 316; 55 S.L.R. 293; 1918, 1 S.L.T. 200.

(6) An interlocutor refusing a reopening note. Sec. 27 (e) as amended by Act of 1913.

(7) An interlocutor against which the Sheriff-Substitute, either *ex proprio motu* or on the motion of any party, grants leave to appeal. Sec. 27 (f).

There are specially mentioned in the Rules as appealable with leave of the Sheriff-Substitute the following:—

1. Interlocutor remitting a cause to another sheriffdom. Rules 20 and 21.
2. Interlocutor deciding question of admissibility of evidence. Rule 75.
3. Interlocutor deciding question of confidentiality or hypothec over documents. Rule 76.

The following interlocutors were held not appealable without leave of the Sheriff-Substitute under the former practice, and it is thought that the competency is not affected by the Act of 1907:—

- (a) Fixing the scale of expenses, *Shaw v. Brown*, 1886, 2 Sh. Ct. Rep. 203.
- (b) Ordering a party to sist a mandatory, *Lawson v. Young*, 1891, 7 Sh. Ct. Rep. 319.
- (c) Ordering claims in multiplepinding, *Macduff v. Macduff*, 1892, 9 Sh. Ct. Rep. 243.
- (d) Approving of the auditor's report and decerning for taxed

expenses, *Liddall v. Arnott*, 1893, 1 S.L.T. 161; *Anderson & Co. v. Spence*, 1898, 15 Sh. Ct. Rep. 71; but see *contra*, *Laurenson v. Gordon*, 1901, 18 Sh. Ct. Rep. 319, and *Paterson v. Whitelaw*, 1899, 15 Sh. Ct. Rep. 256. See also under the Act of 1907, *Dalton & Co. v. Boyle & Co.*, 1910, 26 Sh. Ct. Rep. 53, and *M'Kinstrey v. Plean Colliery Co. Ltd.*, 1911, 27 Sh. Ct. Rep. 62.

(e) Ordaining caution for violent profits, *Jack v. Carmichael*, 1894, 10 Sh. Ct. Rep. 242.

(f) Granting protestation, *Robertson v. Black & Watson*, 1901, 18 Sh. Ct. Rep. 98.

It is to be noted that while sec. 28 of the Act of 1907 expressly limits the right of appeal to the Court of Session to the judgments therein set forth, sec. 27, dealing with appeals from the Sheriff-Substitute to the Sheriff, while enumerating judgments that are appealable, does not in its terms expressly exclude other interlocutors.

There seems to be difference of opinion as to whether there may not be an appeal against other interlocutors, *Maxwell, Ltd. v. Adam*, 1911, 2 S.L.T. 149.

3. Summary Applications

In the case of applications made at common law, the ordinary rules as to appealing apply.

Causes raised under special statutes follow the ordinary rules as to appealing, unless the statutes under which they are brought contain special provisions on the subject. If there are such special provisions, either as to allowance, exclusion, or conditions of appeal, these have to be followed. Act, sec. 28.

Portobello Mags. v. Edinburgh Mags., 1882, 10 R. 130; 20 S.L.R. 92; *Roxburgh C. C. v. Dalrymple's Trs.*, 1894, 21 R. 1063; 31 S.L.R. 906; 2 S.L.T. 167.

There are the following decisions as to the competency of appeals from Sheriffs-Substitute in various statutory proceedings:—

Agricultural Holdings Act, 1883:—*Gillespie's Hospital v. Penman*, 1885, 1 Sh. Ct. Rep. 292; *Gardiner v. Lord Abercrombie*, 1893, 9 Sh. Ct. Rep. 33.

Bankruptcy (Scotland) Act, 1913, sec. 166:—*Edinburgh Parish Council v. Craig*, 1918, 34 Sh. Ct. Rep. 36.

Burial Grounds (Scotland) Act, 1855:—*Strichen P. C. v. Goodwillie*, 1908, S.C. 835; 45 S.L.R. 684; 16 S.L.T. 70.

Edinburgh Corporation Act, 1906 :—*Allen & Sons Billposting Ltd. v. Edinburgh Corpn.*, 1909, S.C. 70; 46 S.L.R. 65; 16 S.L.T. 410.

Education Act, 1872 :—*Finlay and Others v. Gemmell*, 1873, 1 Guth. 412.

Finance Act, 1894 and 1896 :—*Wylie v. Inland Revenue Comrs.*, 1918, 34 Sh. Ct. Rep. 178.

Glasgow Corporation Waterworks Act, 1855 :—*Stobo v. Glasgow Comrs.*, 1867, 1 Guth. 409.

Housing, etc. (Scotland) Act, 1919 :—*M'Mikin v. Carrick Local Authority*, 1922 S.L.T. (Sh. Ct.) 97.

Licensing (Scotland) Act, 1903, and Temperance (Scotland) Act, 1913 :—*Glasgow Corporation v. Railwaymen's Club, etc.*, 1915, 31 Sh. Ct. Rep. 220.

Public Health Act, 1897 :—*Leggatt v. Barrhead Comrs.*, 1902, 19 Sh. Ct. Rep. 7; *Veitch v. Crieff Local Authority*, 1912, 28 Sh. Ct. Rep. 264.

Public Health Act and Housing Act, 1909 :—*Sharp v. Edinburgh Magistrates*, 1913, 29 Sh. Ct. Rep. 131.

Railways and Lands Clauses Acts :—*Hendry's Trs. v. W. H. Railway Co.*, 1894, 10 Sh. Ct. Rep. 33; *Sutherland v. Caledonian Railway Co.*, 1894, 10 Sh. Ct. Rep. 90; *Paisley and Barrhead Railway Co. v. Coats*, 1902, 19 Sh. Ct. Rep. 12.

Registration Act, 1854 :—*Milne v. Archibald*, 1866, 1 Guth. 407.

Roads and Bridges Act, 1878 :—*Berwickshire Road Trs. v. Martin*, 1884, 1 Sh. Ct. Rep. 387; *Clydesdale Police Comrs. v. Kennedy*, 1895, 12 Sh. Ct. Rep. 342; *Thornhill District Committee v. M'Gregor & Son*, 1922, S.C. 512; 59 S.L.R. 399; 1922 S.L.T. 358.

Cf. also cases relating to right of appeal in statutory proceedings to the Court of Session, cited on p. 221.

II. PROCEDURE IN APPEALS TO SHERIFF

An appeal is taken by note of appeal, dated and signed, written on the interlocutor sheet in the following terms :
"The pursuer (*or* defender, *or other party*) appeals to the Sheriff." Rule 87.

If the interlocutor sheet is not in the Sheriff-Clerk's hands, the note may be written on a separate paper and lodged in process along with a certificate by the Sheriff-Clerk that the interlocutor sheet is not in his hands. Rule 87.

There is no warrant for a qualified or partial appeal.

The time limit for appealing to the Sheriff is as follows:—

1. Interlocutor transferring a cause to another sheriffdom:—seven days. Rules 20 and 21.

2. Interlocutor on question of admissibility of evidence:—seven days. Rule 75.

3. Interlocutor on question of confidentiality, etc., at proof:—in open Court. Rule 76.

4. Interlocutor granting interim interdict:—fourteen days from the date of intimation. Rule 86.

5. Interlocutory judgments:—fourteen days, if not sooner extracted. Rule 86.

6. Final judgment:—three months, if not sooner extracted or implemented. Rule 86.

The date of every interlocutor is deemed to be the date on which it is entered in the Books of Court. Rule 83. This would seem to imply that this date, if different from the date of the interlocutor, should be noted on the interlocutor sheet, or there will be nothing in the process to show whether or not an appeal is timeously taken; but there is no direction as to this.

The limit of time would not, it is thought, be affected by the necessity of obtaining the leave of the Sheriff-Substitute when required, *Duff v. Stewart*, 1881, 9 R. 17; 19 S.L.R. 16.

When an appeal has been taken to the Court of Session and abandoned, the right of appeal to the Sheriff is lost, *Clark v. Comrie*, 1910, 1 S.L.T. 404.

III. EFFECT OF APPEAL TO SHERIFF

On an appeal being taken the process is within two days transmitted to the Sheriff, and notice is sent to the opposite party. Rule 88.

The Sheriff may either—

(a) Fix a diet for oral hearing of parties. Rule 89.

(b) Order a reclaiming petition and answers thereto. Rule 89, as amended by Act of 1913.

(c) Where parties concur, dispose of the appeal without either a hearing or a reclaiming petition. Rule 90, as amended by Act of 1913.

Reclaiming petitions and answers are practically written arguments for each of the parties on the whole case. Except where indispensable, they should not contain quotations from interlocutors, notes, proof, or pleadings.

It is competent for the Sheriff when the action is before him on appeal on any point to open the record *ex proprio motu* if it appear to him not to have been properly made up, or to allow further proof. Act of 1907, sec. 27, as amended by Act of 1913.

The affirming of an interlocutor does not carry expenses of the appeal unless expressly mentioned, *M'Eachan v. Macdonald*, 1880, 7 R. 574; 17 S.L.R. 392.

An appeal brings under review the whole previous interlocutors pronounced in the cause, and is available to all parties in the cause without separate appeals being noted. Act, sec. 29.

Notwithstanding an appeal—

1. The Sheriff-Substitute may—

(a) Regulate all matters relating to interim possession.

(b) Make orders for preservation or for sale of property, when perishable.

(c) Make orders for preservation of evidence.

(d) Make in his discretion any interim order which a due regard to the interests of the parties may require. Rule 91.

Such orders are not subject to review except by the appellate Court at the hearing of the appeal. Rule 91.

2. An interim interdict is binding till recalled. Sec. 29.

3. Immediate execution of a warrant of sequestration for rent, or of warrants to take inventories, or to place effects in custody *ad interim*, or of warrants of interim preservation, is not prevented. Sec. 29.

After an appeal has been noted, the appellant is not entitled to abandon it unless by consent of all parties or by leave of the Sheriff. Rule 96.

Appeals are not affected by the death, resignation, or removal of a Sheriff. Sec. 27.

CHAPTER XVI

APPEALS FROM SHERIFF COURT TO COURT OF SESSION

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I. CLASSIFICATION AND COMPETENCY OF APPEALS FROM SHERIFF COURT TO COURT OF SESSION

APPEALS, including removal of causes from the Sheriff Court to the Court of Session, may be conveniently grouped as falling into the following classes:—

1. Appeal for review of an interlocutory judgment, p. 226.
2. Appeal for review of a final judgment, p. 227.
3. Appeal for review of a final judgment in a summary cause, p. 229.
4. Appeal against the interlocutor applying the verdict of a jury in a trial before the Sheriff, p. 231.
5. Appeal, or more properly, "Removal," in order to have a cause tried by a jury in the Court of Session, p. 231.
6. Appeal, or more properly, "Removal," from the Sheriff Court for procedure in the Court of Session, p. 235.

7. Remit of cause between husband and wife or relating to custody of children by the Sheriff to the Court of Session, p. 236.

8. Removal of an action on account of its contingency with a cause depending in the Court of Session, p. 245.

9. Suspension and reduction of a Sheriff Court decree, p. 245.

10. Appeal on Stated Case, p. 247.

The general principle is that every judgment of an inferior Court is subject to the review of the Court of Session unless such review is excluded expressly or by necessary implication.

Harper v. Rutherglen P. C., 1903, 6 F. 23; 41 S.L.R. 16; 11 S.L.T. 369 (refusal of parochial relief under Poor Law Act, 1845); *Lanark C. C. v. Airdrie Mags.*, 1906, 8 F. 802; 43 S.L.R. 632; 14 S.L.T. 92 (appeal by one expressed method excludes other methods); *Strain v. Strain*, 1886, 13 R. 1029; 23 S.L.R. 739 (application for warrant to imprison—appeal incompetent); *Craik v. Penny*, 1891, 19 R. 339; 29 S.L.R. 287 (brieve of terce).

Under the general principle are included appeals in Dean of Guild Court proceedings, e.g. *Angus v. Jeffray*, 1909, S.C. 400; 46 S.L.R. 388; 1909, 1 S.L.T. 84; and in commissary proceedings, e.g. *Simpson's Exrs. v. Simpson's Trs.*, 1912, S.C. 418; 49 S.L.R. 369; 1912, 1 S.L.T. 187. Exclusion of review does not bar appeal against interlocutors pronounced incompetently or in excess of jurisdiction, *Smith v. Rennie*, 1919, S.C. 705; 56 S.L.R. 606; 1919, 2 S.L.T. 185; *Davison v. Anderson*, 1921, S.C. 369; 1921, 1 S.L.T. 214.

In the case of proceedings brought under particular statutes, special provisions as to the right of appeal are frequently laid down, and these have to be observed. They are not affected by the provisions of the Act of 1907 regarding appeals. Act, secs. 7 and 28. Under this category fall appeals under the Bankruptcy Statutes, and various other statutory appeals not dealt with in this work.

The following cases may be referred to as to the competency of appeals under various statutes:—

Agricultural Holdings (Scotland) Act, 1908:—*Cathcart v. Board of Agriculture*, 1915, S.C. 166; 52 S.L.R. 108; 1914, 2 S.L.T. 379. (Review of Outer House interlocutor—case applies equally to Sheriff Court).

Arbitration (Scotland) Act, 1894:—*Ross v. Ross*, 1920, S.C. 530; 57 S.L.R. 461; 1920, 2 S.L.T. 4.

Building Societies Act, 1874:—*First Edinburgh Starr-Bowkett Building Society v. Munro*, 1883, 11 R. 5; 21 S.L.R. 6; *Galashiels*

Provident Building Society v. Newlands, 1893, 20 R. 821; 30 S.L.R. 730; 1 S.L.T. 87.

Burgh Police (Scotland) Act, 1892:—*Brown v. Leith Mags.*, 1896, 23 R. 654; 33 S.L.R. 475; 3 S.L.T. 312; *Laurenson v. Lerwick Comrs.*, 1896, 24 R. 135; 34 S.L.R. 75; 4 S.L.T. 146; *Heddle v. Leith Mags.*, 1897, 24 R. 662; 34 S.L.R. 479; 4 S.L.T. 335.

Burgh Police Acts, 1892 and 1903:—*Angus v. Jeffray*, 1909, S.C. 400; 46 S.L.R. 388; 1909, 1 S.L.T. 84; *Burgh of Cumnock v. Murdoch*, 1910, S.C. 571; 47 S.L.R. 460; 1910, 1 S.L.T. 312.

Burial Grounds (Scotland) Act, 1855:—*Strichen P. C. v. Goodwillie*, 1908, S.C. 835; 45 S.L.R. 684; 16 S.L.T. 70.

Corn Production Act, 1917:—*Johnson-Ferguson v. Board of Agriculture*, 1921, S.C. 103; 58 S.L.R. 96; 1920, 2 S.L.T. 414.

Crofters Holdings Act, 1886:—*Mackenzie v. Cameron*, 1894, 21 R. 427; 31 S.L.R. 347; 1 S.L.T. 480; *D. of Argyll v. Cameron*, 1888, 16 R. 139; 26 S.L.R. 96.

Edinburgh Corporation Act, 1906:—*Allen & Sons Billposting Ltd. v. Edinburgh Corporation*, 1909, S.C. 70; 46 S.L.R. 65; 16 S.L.T. 410.

Edinburgh Municipal Act, 1879 (Dean of Guild Jurisdiction):—*Somerville v. Edinburgh Assembly Rooms*, 1899, 1 F. 1091; 36 S.L.R. 866; 7 S.L.T. 86; *Somerville v. Macdonald's Trs.*, 1901, 3 F. 390; 38 S.L.R. 296; 8 S.L.T. 400.

Education Act, 1872:—*Bone v. Sorn School Board*, 1886, 13 R. 768; 23 S.L.R. 537.

Friendly Societies Acts, 1875 and 1896:—*Linton v. Glasgow Friendly Society*, 1895, 23 R. 51; 33 S.L.R. 42; 3 S.L.T. 122; *Smith v. Scottish Legal Life Assurance Co.*, 1912, S.C. 611; 49 S.L.R. 457; 1912, 1 S.L.T. 270.

Glasgow District Subway Act, 1890:—*Glasgow Mags. v. Glasgow, etc., Subway*, 1893, 21 R. 52; 31 S.L.R. 70; 1 S.L.T. 286 (Sheriff a statutory arbiter).

Glasgow Police Act, 1866 (Dean of Guild):—*Walker v. Lang*, 1891, 18 R. 928; 28 S.L.R. 720; *Smith v. Rennie*, 1919, S.C. 705; 56 S.L.R. 606; 1919, 2 S.L.T. 185.

Housing, Town Planning, etc., Act, 1909:—*Johnston's Trs. v. Glasgow Corpn.*, 1912, S.C. 300; 49 S.L.R. 269; 1912, 1 S.L.T. 71.

Local Government Act, 1889:—*M'Gilp v. Kilchoman School Board*, 1891, 18 R. 714; 28 S.L.R. 474; *Lanark C. C. v. Motherwell Mags.*, 1912, S.C. 1251; 49 S.L.R. 952; 1912, 1 S.L.T. 504; 2 S.L.T. 229.

Lunacy (Scotland) Act, 1857:—*Wallace v. Glasgow, etc., Lunacy Board*, 1882, 10 R. 245; 20 S.L.R. 171; *Roxburgh, etc., Lunacy Board v. Selkirk P. C.*, 1902, 4 F. 468; 39 S.L.R. 546; 9 S.L.T. 419; *Stirling P. C. v. Dunblane P. C.*, 1912, S.C. 316; 49 S.L.R. 271; 1912, 1 S.L.T. 32.

Merchant Shipping Act, 1854:—*Sinclair v. Spence*, 1883, 10 R. 1077; 20 S.L.R. 726.

Poor Law (Scotland) Act, 1845:—*Cuthill v. Inverkeillor P. C.*, 1910, S.C. 206; 47 S.L.R. 134; 1909, 2 S.L.T. 422.

Public Health Act, 1867, and Rivers Pollution Prevention Act, 1876:—*Guthrie, etc. v. Brechin Mags.*, 1885, 12 R. 469; 22 S.L.R. 343; *Lanarkshire C. C. v. Burgh of Airdrie, etc.*, 1906, 8 F. 802; 43 S.L.R. 632; 14 S.L.T. 92; *Dumfries C. C. v. Langholm Mags.*, 1913, S.C. 307; 50 S.L.R. 209; 1913, 2 S.L.T. 473.

Railway Clauses Act, 1845:—*Main v. Lanark, etc., Railway Co.*, 1893, 21 R. 323; 31 S.L.R. 239.

Turnpike Act, 1831 (1 & 2 Will. iv. c. 43):—*Whitson v. Perthshire C. C.*, 1895, 3 S.L.T. 194.

Review may in certain circumstances be excluded by the conduct of the parties. Such cases are the following:—

(a) Where the parties agree to accept the decision of the Sheriff as final, *Shiels v. Shiels' Trs.*, 1874, 1 R. 502; *Lindsay v. Walker's Trs.*, 1877, 4 R. 870; 14 S.L.R. 560.

(b) Where the parties constitute the Sheriff an arbiter, *Steel v. Steel*, 1898, 25 R. 715; 35 S.L.R. 549; 5 S.L.T. 376. But mere deviations from ordinary judicial procedure will not have this effect, *Gordon v. Bruce*, 1897, 24 R. 844; 34 S.L.R. 633; 5 S.L.T. 13; *Stark's Trs. v. Duncan*, 1906, 8 F. 429; 43 S.L.R. 288; 13 S.L.T. 737.

(c) Where the judgment is pronounced "of consent," *Whyte v. Whyte*, 1895, 23 R. 320; 33 S.L.R. 227; 3 S.L.T. 225 (inquiry may be allowed if correctness of interlocutor challenged); *Paterson v. Kidd's Trs.*, 1896, 23 R. 737; *Pirrie v. M'Neil*, 1922, 59 S.L.R. 162; 1922 S.L.T. 160.

(d) Where an appellant did not insist on an appeal which he had taken to the Sheriff, appeal to Court of Session was held incompetent, *Manchester, etc., Bank, Ltd. v. Moore*, 1909, S.C. 246; 46 S.L.R. 222; 16 S.L.T. 595.

II. LIMIT OF VALUE AS REGARDS APPEAL

The right of appeal in ordinary actions, both as regards interlocutory and final judgments, is affected by the value of the cause.

Review by the Court of Session, excepting the qualified right of appeal in summary causes, is competent only if the value of the cause exceeds £50 exclusive of interest and expenses. Act of 1907, sec. 7 and sec. 28, as re-enacted by Act of 1913.

The general principles for determining value may be summarised as follows:—

(1) The sum craved in the action, as a rule, determines the question of value; and if the sum sued for, exclusive of interest and expenses, does not exceed £50, appeal is incompetent.

Appeal was held competent in the following cases dealing with the £25 limit:—

(a) Where the conclusion was for £25 with interest from the date of citation, *Martin & Sons v. Robertson & Co.*, 1872, 10 M. 949; 44 J. 534; but under the existing statute it has been held that interest which is accessory to the principal sum sued for is not to be taken into account, *Bowie v. Donaldson*, 1922, S.C. 9; 59 S.L.R. 26; 1921, 2 S.L.T. 236.

(b) Where claim was for aliment of 2s. 6d. a week to a man sixty-six years old, *Hamilton v. Hamilton*, 1877, 4 R. 688; 14 S.L.R. 448.

(c) Where a claim in a *cessio* for a debt of £42 raised a question as to the right to poidned goods valued at £18, *Henderson v. Grant*, 1896, 23 R. 659; 33 S.L.R. 483; 3 S.L.T. 311. But where a claim was for £53 on a consigned fund of £17 an appeal was held incompetent, *Dobbie v. Thompson*, 1880, 7 R. 983; 17 S.L.R. 677.

(2) Where there are several defenders having a community of interest, appeal is competent although the sum claimed from each is less than £50.

Dykes v. Merry & Cunninghame, 1869, 7 M. 603; 41 J. 355; *Nelson, Donkin & Co. v. Browne*, 1876, 3 R. 810; 13 S.L.R. 523; *Birrell v. Taylor*, 1884; 12 R. 151; 22 S.L.R. 103 (pursuer holding separate debts by assignation). But the rule was not applied where there was no community of interest, *Brotherston v. Livingston*, 1892, 20 R. 1; 30 S.L.R. 1.

Appeal was held competent in conjoined actions where sum concluded for in each was below limit, *Campbell and Others, v. Train*, 1910, S.C. 147; 47 S.L.R. 200; 1909, 2 S.L.T. 458.

(3) Where the judgment determines a question of continuing liability which may amount to more than £50, appeal will be competent although the sum actually sued for be less than that amount.

Drummond v. Hunter, 1869, 7 M. 347; 41 J. 203; *Cunningham v. Black*, 1883, 10 R. 441; 20 S.L.R. 295 (continuing contract of

lease); *Den v. Lumsden*, 1891, 19 R. 77; 29 S.L.R. 76 (continuing liability for relief); *Paisley P. C. v. Glasgow P. C.*, 1907, S.C. 674; 44 S.L.R. 520; 14 S.L.T. 853; *Stevenson v. Sharp*, 1910, S.C. 580; 47 S.L.R. 511; 1910, 1 S.L.T. 275; *Abrahams, Ltd. v. Campbell*, 1911, S.C. 353; 48 S.L.R. 191; 1911, 1 S.L.T. 2 (continuing guarantee).

But the following cases were held not to fall under this rule, viz.:—

(a) An action for payment of rent, though premises held on lease, *N.B. Railway Co. v. M'Arthur*, 1889, 17 R. 30; 27 S.L.R. 34.

(b) An action for payment of assessment, *Heddlie v. Gow*, 1880, 18 S.L.R. 96.

(c) An action for payment of aliment not inferring continuous liability, *M'Farlane v. Friendly Society of Stornoway*, 1870, 8 M. 438; *Stirling P. C. v. Perth P. C.*, 1898, 25 R. 964; 35 S.L.R. 735; 6 S.L.T. 56; *Melrose P. C. v. Hawick P. C.*, 1912, S.C. 1029; 49 S.L.R. 749; 1912, 2 S.L.T. 47.

(d) An action for payment of a call of £12, although the question of membership of an association was raised, *Standard Shipowners, etc., Association v. Taylor*, 1896, 23 R. 870; 33 S.L.R. 647; 4 S.L.T. 57.

(4) Where the sum sued for is the balance of a sum reduced below the appealable limit by a separate counter-claim, there will be the right of appeal.

Inglis v. Smith, 1859, 21 D. 822; but otherwise if the counter-claim is part of the transaction sued on, *Stevens & Co. v. Grant*, 1877, 5 R. 19; 15 S.L.R. 7.

(5) If the cause when raised exceeded the limit of value, appeal is not necessarily barred by reason of the interest of parties being subsequently brought below it.

Buie v. Stiven, 1863, 2 M. 208; *M'Kimmie's Trs. v. Armour*, 1899, 36 S.L.R. 675; 7 S.L.T. 21 (admission at closing of record that an item which brought the sum sued for below £25 had been paid); *Tait v. Lees*, 1903, 5 F. 304; 40 S.L.R. 253; 10 S.L.T. 528 (action of filiation where child died before decree). But where a claim of damages was restricted before the closing of the record to £20, appeal was held incompetent, *Cairns v. Murray*, 1884, 12 R. 167; 22 S.L.R. 116. See as to judging of the value from statements on the record, *Soutar v. Mulhern*, 1907, S.C. 723; 44 S.L.R. 563; 14 S.L.T. 862.

(6) In actions *ad factum præstandum*, such as interdicts, actions regarding possession, actions for delivery,

and the like, the value is deemed to exceed £50, unless the contrary clearly appears from the averments of the parties.

Henry v. Morrison, 1881, 8 R. 692; 18 S.L.R. 438 (delivery of documents of debt of sum less than £25, appeal competent); *Thomson v. Barclay*, 1883, 10 R. 694; 20 S.L.R. 440 (conclusion for sequestration, caution, and removing); *Broatch v. Pattison*, 1898, 1 F. 303; 36 S.L.R. 220; 6 S.L.T. 261 (appeal in petition for *cessio*). But see otherwise in action with simple conclusion for rent, *Welsh v. Duncan*, 1893, 20 R. 1014; 30 S.L.R. 933. Where both parties admit that the value does not exceed the limit appeal is excluded, *General Guarantee Corp'n. v. Alexander*, 1918, S.C. 662; 55 S.L.R. 645; 1918, 2 S.L.T. 30.

If there is an alternative conclusion for a money payment not exceeding £25, there was no appeal under the former procedure, and the same rule would now hold as regards the £50 limit, *Singer Manufacturing Co. v. Jessiman*, 1881, 8 R. 695; 18 S.L.R. 496; *Dickson v. Bryan*, 1889, 16 R. 673; 26 S.L.R. 511 (petition to imprison or restore pointed goods or pay £9). But where the alternative conclusion for a money payment was indefinite, *e.g.* "£35 or such other sum as may be found to be the value," appeal was held competent, *Shotts Iron Co. v. Kerr*, 1871, 10 M. 195; 44 J. 117; *Aberdeen v. Wilson*, 1872, 10 M. 971; 44 J. 540. Where in an action for interdict and damages the conclusion for interdict became inoperative, appeal on the petitory conclusion which was under the limit was held incompetent, *David Allen & Sons' Billposting, Ltd. v. Dundee, etc., Billposting Co. Ltd.*, 1912, S.C. 970; 49 S.L.R. 716; 1912, 1 S.L.T. 457.

(7) Actions of declarator are not affected by the rule as to value.

This refers to actions of declarator in the proper sense, not necessarily to all actions that have declaratory conclusions, *Edinburgh Street Tramways Co. v. Torbain*, 1876, 3 R. 655; 4 R. (H.L.) 87; 14 S.L.R. 729.

III. APPEAL FOR REVIEW OF AN INTERLOCUTORY JUDGMENT

An interlocutory judgment is a judgment which is not "final," as the term is defined in the Act, sec. 3 (*h*). See p. 227.

The interlocutory judgments which are appealable to the Court of Session are the following:—

1. An interlocutor granting interim decree for payment of money, other than a decree for expenses. Sec. 28 (a).

The similar provision previously in force was held to include a warrant to pay money consigned in Court, *Baird v. Glendinning*, 1874, 2 R. 25; 12 S.L.R. 11; *Sinclair v. Baikie*, 1884, 11 R. 413; 21 S.L.R. 275; and not to include an order to make consignment, *Maxton v. Bone*, 1886, 13 R. 912; 23 S.L.R. 645.

2. An interlocutor sisting the action. Sec. 28 (b).

An interlocutor inferring a sist was held to be appealable, *Watson v. Stewart*, 1872, 10 M. 494; 44 J. 269; *Horn & Co. v. Tangyes, Ltd.*, 1906, 8 F. 475; 43 S.L.R. 362; 13 S.L.T. 824.

3. An interlocutor refusing a reponing note. Sec. 28 (c).

4. An interlocutor against which the Sheriff or the Sheriff-Substitute, either *ex proprio motu*, or on the motion of any party, grants leave to appeal. Sec. 28 (d).

Where an appeal has been taken under sec. 28 (d) against an allowance of proof, and the case remitted back to the Sheriff, it is not competent thereafter to have a case transmitted for jury trial under sec. 30, *Ellerman Lines, Ltd. v. Clyde Navigation Trs.*, 1909, S.C. 694; 46 S.L.R. 472; 1909, 1 S.L.T. 294.

The rules as to the value of the cause apply to appeals against interlocutory as well as final judgments.

The appeal may be taken to the Court of Session either from the Sheriff-Substitute or from the Sheriff. Sec. 28.

IV. APPEAL FOR REVIEW OF FINAL JUDGMENT

A final judgment is defined as meaning "an interlocutor which by itself, or taken along with previous interlocutors, disposes of the subject-matter of the cause, notwithstanding that judgment may not have been pronounced on every question raised, and that expenses found due may not have been modified, taxed, or decerned for." Secs. 3 (h) and 28.

An interlocutor disposing of a claim in a process of competition falls under this description, *Glasgow Corpn. v. General Accident, etc., Assurance Corpn. Ltd.*, 1914, S.C. 835, 51 S.L.R. 712; 1914, 2 S.L.T. 64.

Where a Sheriff refused to dispose of the question of ex-

penses, suspension of the decree was granted, *Caledonian Railway Co. v. Cochrane's Trs.*, 1897, 24 R. 855; 34 S.L.R. 643; 5 S.L.T. 21.

The appeal may be taken either from the Sheriff-Substitute or the Sheriff. Sec. 28.

The following interlocutors have been held to be final under similar provisions :—

(a) Granting decree by default, *Robb v. Elgin*, 1877, 14 S.L.R. 473.

(b) Refusing to repon against decree in absence, *Smith v. Inglis*, 1881, 18 S.L.R. 563.

(c) Disposing of questions as regards certain of the parties only, *Duke of Roxburghe*, 1875, 2 R. 715; 12 S.L.R. 472.

(d) Ordaining execution of works, although further orders of the Court would be necessary, *Malcolm v. M'Intyre*, 1877, 5 R. 22; 15 S.L.R. 8; *M'Ewan v. Sharp*, 1899, 1 F. 393; 36 S.L.R. 292; cf. *Jardine v. Mags of Moffat*, 1907, S.C. 1065; 44 S.L.R. 749; 15 S.L.T. 133.

(e) Repelling defender's pleas, granting warrant of sale for rent, and continuing the cause, *Turner's Trs. v. Steel*, 1899, 2 F. 363; 37 S.L.R. 250; 7 S.L.T. 287.

(f) Deciding the question of liability for expenses, *Fleming v. North of Scotland Banking Co.*, 1881, 9 R. 11; 19 S.L.R. 4; *Bowman's Trs. v. Scott's Trs.*, 1901, 3 F. 450; 38 S.L.R. 557; *Barrie v. Caledonian Railway Co.*, 1902, 5 F. 30; 40 S.L.R. 50; 10 S.L.T. 333; *Caldwell v. Dykes*, 1906, 8 F. 839; 43 S.L.R. 606; 14 S.L.T. 67; *Wyllie v. Fisher*, 1907, S.C. 686; 44 S.L.R. 506; 14 S.L.T. 894; *Garrioch v. Glass*, 1911, S.C. 453; 48 S.L.R. 347; 1911, 1 S.L.T. 89; *Jack v. Black*, 1911, S.C. 691; 48 S.L.R. 586; 1911, 1 S.L.T. 124; *E. of Kintore v. Pirie & Son, Ltd.*, 1904, 42 S.L.R. 5; 12 S.L.T. 385. See p. 259 as to appeal on question of expenses.

(g) Deciding the question of amount of modification, *Inglis v. National Bank of Scotland*, 1911, S.C. 6; 48 S.L.R. 9; 1910, 2 S.L.T. 207; *Taylor's Trs. v. M'Gavigan*, 1896, 23 R. 738; 33 S.L.R. 569; 4 S.L.T. 174.

(h) Disposing of objections to taxation, *Innes v. Macdonald*, 1899, 1 F. 380; 36 S.L.R. 284; 6 S.L.T. 273; *M'Alley v. Marshall's Trs.*, 1913, 1 S.L.T. 450; *Craig v. Craig*, 1906, 44 S.L.R. 100; 14 S.L.T. 469.

The following interlocutors have been held not appealable :—

(a) Sustaining the competency of a multiplepinding, *Gordon v. Graham*, 1874, 1 R. 1081; 11 S.L.T. 623.

(b) Allowing proof by writ or oath, *Shirra v. Robertson*, 1873,

11 M. 660; 45 J. 412; *Wilson v. Brackenridge*, 1888, 15 R. 587; 25 S.L.R. 394.

(c) Ranking a claimant without operative decree, *Strichen Endowments v. Diveral*, 1891, 19 R. 79; 29 S.L.R. 102.

(d) Refusing order for caption, *Broatch v. Pattison*, 1898, 1 F. 303; 36 S.L.R. 220; 6 S.L.T. 261.

(e) Granting decree for expenses, *Tennents v. Romanes*, 1881, 8 R. 824; 18 S.L.R. 583; *Thompson & Co. v. King*, 1883, 10 R. 469; 20 S.L.R. 313; *Stirling Maxwell's Trs. v. Kirkintilloch Police Comrs.*, 1883, 11 R. 1; 21 S.L.R. 1.

(f) Disposing of the merits, but reserving the question of expenses, *Greenock Parochial Board v. Millar*, 1877, 4 R. 737; 14 S.L.R. 489; *Baird v. Barton*, 1882, 9 R. 970; 19 S.L.R. 731; *Russell v. Allan*, 1877, 5 R. 22; *Burns v. Waddell*, 1897, 24 R. 325; 34 S.L.R. 264; 4 S.L.T. 231; *Caledonian Railway Co. v. Glasgow Corpn.*, 1900, 2 F. 871; 37 S.L.R. 672; 8 S.L.T. 19.

V. APPEAL IN SUMMARY CAUSES

In a summary cause there is a limited right of appeal to the Court of Session provided by sec. 28 of the Act of 1907 as re-enacted with alterations by the Act of 1913.

The following are the requisite conditions for competency of this appeal:—

1. The right of appeal is not confined to cases falling within the statutory definition of “summary cause,” but applies to an action which “is being tried as a summary cause.” Act of 1913, sec. 28.

2. It is only competent in cases where there has been an appeal from the Sheriff-Substitute to the Sheriff, and a final judgment pronounced by the latter.

3. The Sheriff has to certify the cause as suitable for appeal to the Court of Session.

4. The motion for certificate to appeal must be made within seven days of the date of the final interlocutor.

5. If evidence in the cause has not been recorded, the appeal will be upon questions of law only. Act of 1907, sec. 8.

The alterations effected by the Act of 1913 have removed the difficulties referred to in *Duke of Argyll v. Muir*, 1910, S.C. 96;

47 S.L.R. 67; 1909, 2 S.L.T. 347; and in *Dickson & Walker v. John Mitchell & Co.*, 1910, S.C. 139; 47 S.L.R. 110; 1909, 2 S.L.T. 390.

The procedure after leave to appeal is granted is not specially defined. Rule 92 apparently applies, and the appeal is competent within three months, unless extract is issued, which may be done on the expiry of seven days.

VI. PROCEDURE IN THE SHERIFF COURT IN THE FOREGOING APPEALS FOR REVIEW

In each of the foregoing cases of appeal, viz.—(a) appeal against an interlocutory judgment, (b) appeal against a final judgment, and (c) appeal against a judgment in a summary cause, the procedure in the Sheriff Court is according to the following provisions:—

1. Form of Appeal.—The appeal is taken by note of appeal written on the interlocutor sheet in the following terms:—

“The pursuer (*or defender or other party*) appeals to the
Division of the Court of Session.”

The note specifies the Division, and is signed by the party or his agent, and is dated. Rules 87 and 93.

Rule 87, dealing with appeal from the Sheriff-Substitute, requires the note to be dated and signed. Rule 93, dealing with appeal from the Sheriff, makes no such requirement, but it may be inferred that there should be date and signature.

If the interlocutor sheet is not in the hands of the Sheriff-Clerk the note of appeal is written on a separate paper and lodged along with the Sheriff-Clerk's certificate that the interlocutor sheet is not in his hands. Rules 87 and 93.

2. Time of Appeal.—(1) Appeal for review of an interlocutory judgment, whether of the Sheriff-Substitute or of the Sheriff, may be taken within fourteen days of the interlocutor, if it has not been sooner extracted. Rules 86 and 92.

(2) Appeal for review of a final judgment in an ordinary cause, whether of the Sheriff-Substitute or of the Sheriff, may be taken within three months of its date, if it

has not been sooner extracted or implemented. Rules 86 and 92.

(3) Appeal for review of a final judgment of the Sheriff in a summary cause may be taken within three months if it has not been sooner extracted or implemented. Rule 92.

The date on which leave to appeal, where necessary, is granted would have no effect on the time limit for appealing.

The words "but not later" are added to the specification of time in the rules 86 and 92, but they appear to be superfluous.

The date of the interlocutor is deemed to be the date on which it is entered in the Books of Court. Rule 83.

Extract of a decree for expenses would probably not bar appeal against a previous interlocutor, *Macfarlane v. Thomson*, 1884, 12 R. 232; 22 S.L.R. 12.

Allowing an extract to be issued on caution being found does not restrict the time of appealing, *Simpson v. Jack*, 1888, 16 R. 131; 26 S.L.R. 76.

VII. APPEAL IN JURY TRIAL IN SHERIFF COURT

As to the competent grounds of appeal against the judgment applying the verdict of a jury, and the procedure in the Sheriff Court, see p. 117. For procedure in the Court of Session, see p. 239.

VIII. REMOVAL OF CAUSE TO COURT OF SESSION FOR JURY TRIAL

Either party in a cause (except in actions by employees against employers, as noted below) in which the claim sued for is in amount or value above £50, and in which a proof has been allowed, may require the cause to be remitted to the Court of Session for the purpose of being tried by jury. Act, sec. 30.

Under the terms of sec. 40 of the Judicature Act, 6 Geo. iv. c. 120, and sec. 73 of the Court of Session Act, 1868, both of which sections are now repealed, appeals were in practice taken for the purpose of review on the relevancy, even though trial by jury was not contemplated by the appellant. See *Keith Bros. v.*

Maxwell's Factor, 1890, 17 R. 799; 27 S.L.R. 664; *Fife v. Orr*, 1895, 23 R. 8; 33 S.L.R. 1; 3 S.L.T. 114; *Thornton v. Boyd & Forrest*, 1907, S.C. 390; 44 S.L.R. 283; 14 S.L.T. 628; *Gilchrist v. Whyte*, 1907, S.C. 984; 44 S.L.R. 699; 15 S.L.T. 86. It is clearly open to the respondent in a case removed for jury trial to state objections to the relevancy; as to the competency of a defender taking this appeal and then objecting to the relevancy see *Ellerman Lines, Ltd. v. Clyde Navigation Trs.*, 1909, S.C. 694; 46 S.L.R. 472; 1909, 1 S.L.T. 294.

The following points fall to be noticed in regard to removals for jury trial:—

(a) Claims by employees against employers, in respect of injury caused by accident arising out of and in the course of their employment, and concluding for damages under the Employers' Liability Act, 1880, or at common law, or alternatively at common law or under that Act, are excepted from this right of appeal. Act, sec. 30.

The definition of "employee" (Act of 1907, sec. 3, as amended by Act of 1913) as including the representatives of a deceased employee has rendered inapplicable the decisions in *Cook v. Bonnybridge Silica Co. Ltd.*, 1911, S.C. 177; 48 S.L.R. 243; 1910, 2 S.L.T. 399; *Brown v. Glenboig Union Fireclay Co. Ltd.*, 1911, S.C. 179; 48 S.L.R. 245; 1911, 1 S.L.T. 36; and *Lawrie v. Banknock Coal Co. Ltd.*, 1911, S.C. 817; 48 S.L.R. 629; 1911, 1 S.L.T. 353; 1912, S.C. (H.L.) 20; 49 S.L.R. 98; 1911, 2 S.L.T. 475.

(b) The claim must be in amount or value above £50.

The words "exclusive of interest and expenses" used in sec. 7 are not found in sec. 30, but are evidently to be implied.

(c) The application to remove must be made within six days of the interlocutor allowing proof. Sec. 30.

Ellerman Lines, Ltd. v. Clyde Navigation Trs., *supra*; *Williams v. Watt*, 1889, 16 R. 687; 26 S.L.R. 536 (not the interlocutor fixing a diet).

(d) An interlocutor allowing proof does not include an order for proof to lie *in retentis* or for recovery of documents. Sec. 30.

(e) Removal for jury trial is not competent where appeal under sec. 28 has been taken against the interlocutor allowing proof.

Ellerman Lines, Ltd. v. Clyde Navigation Trs., *supra*.

The following decisions dealing with appeal for jury trial under the former practice are still, it is thought, applicable, and may be referred to:—

Kinnes v. Fleming, 1881, 8 R. 386; 18 S.L.R. 245; *Williams v. Watt*, 1889, 16 R. 687; 26 S.L.R. 536; *Davidson v. Davidson's Exr.*, 1891, 18 R. 1069; 28 S.L.R. 809; *Duff v. Stewart*, 1881, 9 R. 17; 19 S.L.R. 16 (time is not suspended by application for leave); *Crawford v. Simpson*, 1901, 38 S.L.R. 272; 8 S.L.T. 367 (appeal not timeously taken). Appeal is competent although the interlocutor allows proof of part of the case only, *Conroy v. Inglis*, 1895, 22 R. 620; 32 S.L.R. 496; 3 S.L.T. 25; *M'Cafferty v. M'Cabe*, 1898, 25 R. 872; 35 S.L.R. 679; 6 S.L.T. 7; *M'Coll v. Gardner & Co.*, 1898, 25 R. 395; 35 S.L.R. 327; 5 S.L.T. 287 (proof of preliminary objections previously allowed; appeal competent after proof allowed on the merits).

Appeal for jury trial was held incompetent in the following circumstances, and the decisions are still applicable:—

(a) When the proof allowed was of a plea in bar only, *M'Coll v. Gardner & Co.*, *supra*; *Curran v. M'Alpine*, 1898, 1 F. 326; 36 S.L.R. 238; 6 S.L.T. 230.

(b) Where an appeal had been taken from the Sheriff-Substitute to the Sheriff, *M'Arthur v. Boucher*, 1887, 15 R. 117; 25 S.L.R. 138.

(c) Where the interlocutor allows proof only by writ or oath, *Shirra v. Robertson*, 1873, 11 M. 660; 45 J. 412; *Wilson v. Brackenridge*, 1888, 15 R. 587; 25 S.L.R. 394; *Glasgow Central Stores v. Goodson*, 1901, 3 F. 1075; 38 S.L.R. 765; 9 S.L.T. 122; but where proof *habili modo* was allowed, appeal was held competent, *Robertson v. Earl of Dudley*, 1875, 2 R. 935.

(d) Where proof was allowed "of consent before answer," *Paterson v. Kidd's Trs.*, 1896, 23 R. 737; 33 S.L.R. 568; 4 S.L.T. 11; but see as to effect of words "of consent" in interlocutor, *Fleming v. Eadie*, 1897, 25 R. 3; 35 S.L.R. 1; 5 S.L.T. 136; *Whyte v. Whyte*, 1895, 23 R. 320; 33 S.L.R. 227; *Morrison v. Mackay*, 1895, 2 S.L.T. 502.

(f) If the Court think the case unsuitable for jury trial, they may remit the case back to the Sheriff or to a Lord Ordinary, or send it for proof to a judge of the Division. Sec. 30.

When an issue is allowed the practice is to remit the case to a Lord Ordinary for trial.

The rules laid down under the former practice, and still applicable under the Act of 1907 for determining whether a jury trial should be allowed, are to be found summarised in *Sharples v. Yuill & Co.*, 1905, 7 F. 657; 42 S.L.R. 538; 13 S.L.T. 51, as follows, viz. :—

(1) The Court is not bound to grant a jury trial. (2) It may decide the case on any legal ground which is capable of disposing of the case without inquiry, or it may order inquiry by some other method than jury trial, if it considers jury trial unsuitable. (3) Such inquiry may be either by proof before a judge in the Court of Session, or by proof before the Sheriff. (4) In deciding between the two methods, the Court will keep in view the nature of the case, and that the one course will and the other will not allow of ultimate appeal to the House of Lords on the facts. (5) In deciding whether a case is or is not suitable for jury trial, it will apply the same criterion as it does in cases raised in the Court of Session, *i.e.* it will consider whether the action is of the class specially appropriated by statute to jury trials, and if so, whether there is any special cause for not so trying it. (6) As to amount, it will be guided by the standard fixed by the Legislature, viz. £40 (under the 1907 Act, £50), so that unless the action on the face of it discloses a claim which in the opinion of the Court could not reasonably entitle the pursuer to a verdict of more than £40 (now £50), it will not refuse a jury trial to an otherwise appropriate case.

These principles have been applied in *Dawson v. Stewart & Shaw*, 1905, 7 F. 769; 42 S.L.R. 621; 13 S.L.T. 112; *M'Laughlan v. Clyde Valley, etc., Co.*, 1905, 8 F. 131; 43 S.L.R. 25; 13 S.L.T. 501; *Smellie v. Whitelaw*, 1907, 44 S.L.R. 586; 14 S.L.T. 865; *Alberti v. Bernardi*, 1921, S.C. 468; 58 S.L.R. 322; 1921, 1 S.L.T. 262 (slander); *Kennedy v. Bruce*, 1907, S.C. 845; 44 S.L.R. 593; 14 S.L.T. 885; *Barclay v. Smith & Co.*, 1913, S.C. 473; 50 S.L.R. 308; 1913, 1 S.L.T. 90; *Mackie v. Davidson*, 1913, S.C. 675; 50 S.L.R. 461; 1913, 1 S.L.T. 276; *Grant v. Fleming & Co. Ltd.*, 1914, S.C. 228; 51 S.L.R. 187; 1914, 1 S.L.T. 53 (questions of law involved); *Ogg v. Scott*, 1915, S.C. 168; 52 S.L.R. 107; 1914, 2 S.L.T. 392 (breach of promise); *Greer v. Glasgow Corpn.*, 1915, S.C. 171; 52 S.L.R. 109; 1914, 2 S.L.T. 389; *Monaghan v. United Co-operative Baking Society*, 1917, S.C. 12; 54 S.L.R. 211; 1916, 2 S.L.T. 205; *Fraser v. Tod & Sons (Ltd.)*, 1922, S.C. 6; 59 S.L.R. 1; 1921, 2 S.L.T. 211; *Stevenson v. Glasgow Corporation*, 1922, 59 S.L.R. 189; 1922 S.L.T. 185 (extent of injuries); *M'Sorley v. Archibald*, 1922, S.C. 26; 59 S.L.R. 31; 1921, 2 S.L.T. 248 (crave for aliment as well as damages).

Procedure to Remove Cause for Jury Trial.—The party desiring the cause to be remitted or removed for

jury trial writes on the interlocutor sheet a note in the following terms:—"The pursuer (or defender or other party) requires the cause to be transmitted to the Division of the Court of Session." This note is signed by the party or his agent and is dated. C.A.S., D, iv., 1.

The Sheriff-Clerk sends notice of the application to the opposite party within two days, and transmits the process to the clerk of the Division. C.A.S., D, iv., 2, 3.

Thereafter the procedure is as described on p. 237.

The procedure set forth by rule 95 of the Act of 1907 has been superseded by the above-mentioned Act of Sederunt, which is printed on p. 356.

IX. REMOVAL OF CAUSES FOR PROCEDURE IN COURT OF SESSION

The following classes of actions may be required by either party to be remitted from the Sheriff Court to the Court of Session at the closing of the record or within six days thereafter, viz. :—

1. Actions relating to questions of heritable right and title where the value of the subject in dispute exceeds £50 by the year or £1000 in value. Act of 1907, sec. 5 (a).

Muirhead v. Gilmour, 1909, 46 S.L.R. 425; 1 S.L.T. 235 (transmission of cause was held incompetent where the question related to a security for £10 over heritage of over £1000 value). As to what kind of actions involve "questions of heritable right," see *Macandrew v. Dodds*, 1908, S.C. 51; 45 S.L.R. 49; 15 S.L.T. 521; *Nicholson v. Glasgow Blind Asylum*, 1911, S.C. 391; 48 S.L.R. 272; 1911, 1 S.L.T. 37; *Anderson v. M'Gown*, 1911, S.C. 441; 48 S.L.R. 417; 1911, 1 S.L.T. 173.

2. Actions relating to the right of succession to moveables where the value of the subject in dispute exceeds £1000. Sec. 5 (b).

3. Actions relating to division of commonalty, or division, or division and sale of common property where

the value of the subject in dispute exceeds £50 by the year or £1000 value. Sec. 5 (c).

The Act does not expressly deal with the right of removing causes under various statutes from the Sheriff for trial in the Court of Session, *e.g.* applications for the custody of children under the Guardianship of Infants Act, 1886, sec. 10, or complaints under the Rivers Pollution Act, 1876.

As to procedure under the last-mentioned statute, see *Midlothian C. C. v. Pumpherson Oil Co.*, 1902, 4 F. 996; 39 S.L.R. 767; 10 S.L.T. 179.

Such rights of removal are no doubt reserved under the saving clauses in secs. 7 and 28.

Procedure to Remove Action to Court of Session.—

The party desiring the cause to be remitted or removed to the Court of Session writes on the interlocutor sheet a note in the following terms:—"The pursuer (*or* defender *or other party*) requires the cause to be remitted to the

Division of the Court of Session." The note specifies the Division, and is signed by the party or his agent and dated. C.A.S., D, iv., 1.

The Sheriff-Clerk sends written notice of the application to the opposite party within two days, and also transmits the process to the clerk of the Division. C.A.S., D, iv., 2, 3.

Thereafter the procedure followed is as detailed on p. 238.

The procedure set forth in rule 95 of the 1907 Act has been superseded by the above-mentioned Act of Sederunt, which is printed on p. 356.

X. REMIT OF CAUSES BETWEEN HUSBAND AND WIFE OR REGARDING CUSTODY OF CHILDREN BY SHERIFF TO COURT OF SESSION

Remit from the Sheriff Court to the Court of Session at the instance of the Sheriff was introduced for the first time by the Act of 1907, sec. 5.

It applies to—

1. Actions of aliment, provided that as between husband and wife they are actions of separation and aliment, adherence and aliment, or interim aliment.

2. Actions for regulating the custody of children.

The Sheriff may remit such causes to the Court of Session at any stage.

The remit may be either on cause shown or *ex proprio motu*.

The remit can only be made upon grounds of difficulty in the particular case, *Dunbar v. Dunbar*, 1912, S.C. 19; 49 S.L.R. 16; 1911, 2 S.L.T. 349.

Procedure in Cause Remitted by Sheriff.—When the Sheriff has pronounced an interlocutor *ex proprio motu* remitting the cause to one of the Divisions of the Court of Session, the Sheriff-Clerk within two days transmits the process to the clerk of the Division. Thereafter the procedure followed is as detailed below. The pursuer or party leading in the cause is to act as if he were appellant, and the other party to the cause is considered the respondent. C.A.S., D, iv., 4.

The procedure set forth in rule 95 of the Act of 1907 has been superseded by the above-mentioned Act of Sederunt, which is printed on p. 356.

The above provision would apparently apply whether the remit is “on cause shown” or “*ex proprio motu*.”

XI. PROCEDURE IN THE COURT OF SESSION IN APPEALS FOR REVIEW AND IN REMOVALS FOR TRIAL

The procedure in the Court of Session in appeals for a review of the judgment of the Sheriff-Substitute or Sheriff, and in appeals, or more properly removals, for jury trial or for other procedure in the Court of Session, is regulated by rules 88 and 94 of the 1907 Act, by the Court of Session Act, 1868, sec. 71, by the Codifying Act of Sederunt, 1913, D iii. and iv. (p. 354), and by Acts of Sederunt of 23rd November, 1921 (p. 423) and 27th October, 1922 (p. 430).

The steps of procedure are as follows:—

1. Notice of Appeal and Transmission of Process.—

The Sheriff-Clerk, within two days after the taking of an appeal, sends written notice of the appeal to the other party or his agent, and transmits the appeal to the clerk of the Division to which the appeal is taken, who marks the date on which it is received. Failure to send the notice does not invalidate the appeal. Rules 88 and 94.

Rules 88 and 94 deal with appeals for review.

A certificate of intimation should be written on the interlocutor sheet, *Chisholm v. Marshall*, 1874, 1 R. 388; 11 S.L.R. 206.

The rules dealing with appeals to the Court of Session from the Sheriff-Substitute and from the Sheriff are not expressed in identical language, but the requirements of each are practically the same.

In the case of remission under sections 5 or 30, notice of the application to remit is given by the Sheriff-Clerk to the opposite party or his agent within two days after it is made. Failure to give notice does not invalidate the remission, but the Court of Session may give such remedy for any disadvantage or inconvenience thereby occasioned as may in the circumstances be thought proper. C.A.S., D, iv., 2.

Where an application to remit has been made, or in cases where the Sheriff has *ex proprio motu* under the provision of section 5 made a remit, the process is transmitted to the clerk of the Division within two days thereafter. C.A.S., D, iv., 3.

In the case of an appeal against the interlocutor applying the verdict of a jury, the process is transmitted, and intimation sent to the other parties, within three days of the lodging of the note of appeal. Rule 149.

2. Printing and Boxing Appeal.— During session, within fourteen days after the process has been received by the clerk of the superior Court, the appellant prints, boxes,

and lodges the note of appeal, record, and interlocutors. C.A.S., D, iii., 1, and A.S., 23rd November, 1921. (Appendix, pp. 354 and 423).

During vacation the prints are deposited with the clerk within the fourteen days, copies being boxed on the first box-day or sederunt day after the expiry of the fourteen days. C.A.S., D, iii., 2.

Each print boxed in each case must bear a consecutive letter on the front and back, and also reference letters on the margin of each page. C.A.S., A, iii., 3, 5.

In an appeal in a summary cause the note of appeal, record, and interlocutors will be printed. The decision in *Cranston v. Mallow & Lien*, 1912, S.C. 112; 49 S.L.R. 186; 1911, 2 S.L.T. 140, 383, does not apply to the altered rights of appeal.

In all cases, boxing and lodging must be effected within the authorised office hours of the Clerk, *Burrell v. Van t'Hoff*, 1915, S.C. 832; 52 S.L.R. 651; 1915, 1 S.L.T. 423.

Unless printing has been dispensed with, the proof, where material to the consideration of the cause, is printed (or otherwise reproduced, as below), lodged, and boxed in time for the hearing of the appeal. A.S., 23rd November, 1921 (Appendix, p. 423).

Proofs and appendices in appeals instead of being printed may be reproduced by any method so long as the copies are conform to the standard substitute which has been approved by the Court. A.S., 27th October, 1922. (Appendix, p. 430.)

Such productions as are necessary for disposal of the case should, like the evidence, be boxed to the Court in good time before the hearing of the appeal, *Muir v. Mackenzie*, 1881, 9 R. 10; 19 S.L.R. 3. No documents may be boxed which are not in process unless by leave of the Court, *Grierson v. Mitchell*, 1912, S.C. 173; 49 S.L.R. 94; 1911, 2 S.L.T. 412. See also observations as to concerted action by the parties in the matter of printing productions, *H. R. Marsden Ltd. v. Brunton & Sons*, 1914, S.C. 868; 51 S.L.R. 749; 1914, 2 S.L.T. 96.

Where a second appeal is taken in a cause, the previous print may be referred to instead of printing of new, *Dougall's Trs. v. Lornie*, 1900, 2 F. 1123; 37 S.L.R. 855; 8 S.L.T. 117.

Printing may be dispensed with, upon application made to the Court by note lodged within eight days after the process has been received. During vacation the application is made by note to the Lord Ordinary on the Bills, lodged with the clerk to the Division. If printing is dispensed with, a copy of the appeal is lodged, and a copy furnished to the clerk to the President of the Division. C.A.S., D, iii., 1. In practice, copies of all necessary papers are supplied to all the judges of the Division.

If an appellant desires to apply for admission to the poor's roll, he must within eight days ask the Court to dispense with printing, and for a sist *in hoc statu*, *Allan v. Sandeman*, 1881, 8 R. 563; 18 S.L.R. 366; *Campbell v. Farquhar*, 1917, S.C. 365; 54 S.L.R. 267; 1917, 1 S.L.T. 160.

Where printing has been dispensed with *in hoc statu*, and the motion to dispense with printing is ultimately refused, the prints require to be lodged and boxed within fourteen days from the date of refusal, *Ross v. Gray*, 1887, 14 R. 768; 24 S.L.R. 540.

In the case of an appeal against an interlocutor applying the verdict of a jury, it is not necessary to print any notes of the evidence, unless an order is made by the Appellate Court appointing the same to be printed. C.A.S., D, iii., 6. If production of the notes of evidence is ordered by the Court, the appellant procures the extended notes certified by the shorthand writer, and lodges them with the principal clerk. Rule 137.

The following defects in printing were allowed to be rectified:—

(a) Omission to print the note of appeal, *Young v. Brown*, 1875, 2 R. 456; 12 S.L.R. 318.

(b) Printing the wrong summons, *Harvey v. Lindsay*, 1875, 2 R. 980; but where a record had been printed omitting the amendments thereon, the appeal was held incompetent in *Lee v. Maxton*, 1904, 6 F. 346; 41 S.L.R. 281; 11 S.L.T. 623; but a similar omission was allowed to be rectified in *Newton v. Methven*, 1914, S.C. 753; 51 S.L.R. 638; 1914, 2 S.L.T. 21.

(c) Omission to print and box the proof, *Lattimer v. Anderson*, 1881, 9 R. 370; 19 S.L.R. 332; see *Robertson v. Barclay*, 1877, 5 R. 257; but an appeal was held incompetent where the proof was not printed, in *Bell v. Bell*, 1897, 24 R. 847; 34 S.L.R. 634; 5 S.L.T. 14.

Defects in the print may involve the appellant in expenses, *Roxburgh & Co. v. Barlas*, 1876, 3 R. 288; 13 S.L.R. 215.

3. Reponing against Failure to Lodge and Box Appeal.

—If the prints are not timeously lodged, the appellant is held to have abandoned the appeal. He can, however, within eight days thereafter, apply to the Court, or in vacation to the Lord Ordinary on the Bills, to repone him to enable him to insist in the appeal. C.A.S., D, iii., 3.

Rule 96 is as follows:—"After an appeal has been noted, the appellant shall not be entitled to abandon it unless by consent of all parties, or by leave of the Appellate Court." The expression "noting" is not used elsewhere in the Act. The rule would possibly only apply after the appeal has actually been presented, *i.e.* by boxing the prints. The C.A.S. provides for abandonment at an earlier stage, *M'Guire v. Union Cold Storage Co. Ltd.*, 1909, S.C. 384; 46 S.L.R. 323; 1909, 1 S.L.T. 38 (abandonment allowed under rule 96, and £5, 5s. expenses awarded).

No rules can be laid down as to the practice of the Court in regard to excuses for failure to comply with the requirements of the Act of Sederunt as to the time of lodging and boxing appeals. The following circumstances have been held sufficient excuses, *viz.* :—

(a) That the parties resided in the Hebrides, *Macquain v. Macdonald*, 1871, 9 M. 743; 43 J. 409.

(b) That the papers were in the hands of counsel who had left town, *Greig v. Sutherland*, 1880, 8 R. 41; 18 S.L.R. 39.

(c) That the appellant was away from home on business, *Dougan v. Macredie*, 1885, 23 S.L.R. 133.

(d) That a clerk had miscalculated the time owing to his diary omitting Sundays, *Donald v. Irvine*, 1904, 6 F. 612; 41 S.L.R. 420; 11 S.L.T. 821.

(e) That the appellant was away from home ill, *Nisbet v. Corrance*, 1905, 13 S.L.T. 287.

(f) That there was a change of agency, *White v. Rothesay Tramway Co. Ltd.*, 1909, S.C. 760; 46 S.L.R. 528; 1909, 1 S.L.T. 328.

On the other hand, that negotiations for settlement were pending was held no excuse in *Robertson v. Barclay*, 1877, 5 R. 257; 15 S.L.R. 160; and failure to box timeously owing to mere oversight was held fatal in *Taylor v. Macilwain*, 1900, 3 F. 1; 38 S.L.R. 1; 8 S.L.T. 201; and *Bennie v. Cross & Co.*, 1904, 6 F. 538; 41 S.L.R. 381; 11 S.L.T. 718, apparently overruling *Walker v. Reid*, 1877, 4 R. 714; 14 S.L.R. 502, and *Boyd, Gilmour & Co. v. G. & S.-W. Railway Co.*, 1888, 16 R. 104; 26 S.L.R. 84. See also *Creighton v. Wylie & Lochhead*, 1915, S.C. 305; 52 S.L.R. 281; 1915, 1 S.L.T. 73.

Where the appellant is held to have abandoned the appeal, it is competent for the respondent to print and box within eight days of the appellant's failure to print. C.A.S., D, iii., 4.

If the appellant is not reponed, and the respondent does not print within the eight days, the appeal is held abandoned,

and the interlocutor or judgment complained of becomes final. C.A.S., D, iii., 5.

In the case of remits by the Sheriff *ex proprio motu*, the foregoing provisions do not appear to apply. If the party leading in the cause does not print, the other party requires to lodge a note to have him ordained to do so within a specified time, and, on his failure to do so, a further note, praying to have the cause sent back to Sheriff.

Abandonment and Withdrawal of Appeal.—Before an appeal is sent to the Roll it may be abandoned. After that stage the proper form is withdrawal.

Abandonment of an incompetent appeal does not prevent a second appeal if otherwise competent, *Weir v. Tudhope*, 1892, 19 R. 858; 29 S.L.R. 803.

An appeal can be withdrawn before hearing with leave of the Court, on payment of expenses usually modified to £3, 3s., *Gentles v. Beattie*, 1880, 8 R. 13; 18 S.L.R. 1; *Gilchrist & Co. v. Smith*, 1901, 3 F. 329; 38 S.L.R. 238; 8 S.L.T. 337; but the award is in the discretion of the Court, and where the appeal is not withdrawn timeously a larger amount will be awarded, *Johnston v. Rae*, 1876, 3 R. 879 (£5, 5s. allowed); *Stark v. M'Neil*, 1877, 5 R. 196; 15 S.L.R. 112 (£4, 4s. allowed); *Sligo v. Knox*, 1880, 8 R. 41; 18 S.L.R. 39 (full expenses); *Little Orme's Head Limestone Co. v. Hendry & Co.*, 1897, 25 R. 124; 35 S.L.R. 124; 5 S.L.T. 202 (full expenses).

An appeal for jury trial may be abandoned in the same way as if the action had originated in the Supreme Court, *Aitken v. Farquhar*, 1896, 24 R. 268; 34 S.L.R. 237; 4 S.L.T. 213. See also rule 96.

When an appeal has been abandoned, the clerk of Court writes on the interlocutor sheet a certificate of abandonment and retransmits the process to the clerk of the inferior Court.

In applying this provision to causes removed under sections 5 and 30 (see pp. 235 and 231), the Act of Sederunt provides—"In the event of an application for a remission of the cause being abandoned, or held to be abandoned, the docket written by the Clerk of Court or his assistant shall be in the following terms:— 'Retransmitted in respect of the abandonment of the remission.'" C.A.S., D, iv., 4.

Even after the eight days, but before the process was transmitted, the Court reponed the appellant in the following cases:—

Young v. Brown, 1875, 2 R. 456; *Walker v. Reid*, *supra*, p. 241; but see *Boyd, Gilmour & Co. v. G. & S.-W. Railway Co.*, *Taylor v. Macilwain*, and *Creighton v. Wylie & Lochhead*, *supra*, p. 241.

After the process has been retransmitted to the Sheriff Court, the Sheriff grants decree upon the motion of the respondent in the appeal, for payment by the appellant of £3, 3s. of expenses. C.A.S., D, iii., 5.

Stirling v. Henderson, 1897, 12 Sh. Ct. Rep. 28. Where an appeal had been abandoned under a compromise, the Sheriff held he was not entitled to decern for expenses, *Baird v. Paterson*, 1912, 2 S.L.T. 279.

The Sheriff is not entitled to modify the above prescribed award, *Cochran v. Paton & Co.*, 1920, 36 Sh. Ct. Rep. 4.

Objections to Competency and Regularity.—As a rule, objections to the competency or regularity of an appeal should be stated when the case appears in the Single Bills of the Inner House.

Ross v. Brims, 1878, 15 S.L.R. 438; but the Court may allow objection to be stated at the hearing, *Hillhouse v. Walker*, 1891, 19 R. 47; 29 S.L.R. 85.

In the case of removal of causes under sections 5 and 30, upon the appearance of the cause in the Single Bills parties are heard upon any motion to retransmit the cause, or against the competency of the remission. The mode and course of further procedure in the cause, including questions of competency or relevancy, will be determined in the Single Bills or the Summar Roll, as the Division thinks fit. C.A.S., D, iv., 5.

Where there is no appearance for the respondent in an appeal, the Court will not on that account sustain the appeal, but the appellant must show cause why the judgment appealed from should be reversed, *Nicolson v. Munro*, 1877, 4 R. 434; *Alder v. Clark*, 1880, 7 R. 1093; 17 S.L.R. 740; *Aitken v. Robertson*, 1880, 8 R. 12; 18 S.L.R. 68; *Dunbar v. Macadam*, 1884, 11 R. 652; 21 S.L.R. 458.

When an agent ceases to act for a party, it is his duty to communicate the client's address to the opposite agent, that he may

make formal intimation to him, *Gowans v. Adams*, 1908, S.C. 32; 45 S.L.R. 25; 15 S.L.T. 408.

Effect of Appeal.— The same rules apply as in the case of an appeal from the Sheriff-Substitute to the Sheriff. Sec. 29, rule 91. See p. 219.

As to appeal bringing up for review previous interlocutors under Court of Session Act, 1868, sec. 69 (repealed but re-enacted by section 29 of Act of 1907), see *Cross v. Bordes*, 1879, 6 R. 934; 16 S.L.R. 539; *Bell v. Andrews*, 1885, 12 R. 961; 22 S.L.R. 640 (even though affecting the interests of others besides the appellant); *Weir v. Tudhope*, 1892, 19 R. 858; 29 S.L.R. 803 (previous interlocutors extracted).

A general finding of expenses carries the expenses in both Courts, *Halbert v. Bogie*, 1857, 19 D. 762, but an interlocutor dismissing an appeal without any finding as to expenses does not carry the expenses of the appeal, *Macdonald v. Maceachan*, 1880, 7 R. 574; 17 S.L.R. 392.

Unless a case is remitted back to the Sheriff for further procedure it is incompetent for him to deal with it after the appeal has been disposed of, *Macgillivray v. Mackintosh*, 1891, 19 R. 103; 29 S.L.R. 103.

Questions as to interim regulation should be brought before the Sheriff, notwithstanding an appeal, *Trainer v. Renfrew D. C.*, 1907, S.C. 1117; 44 S.L.R. 835; 15 S.L.T. 201 (under Act of 1868, secs. 69 and 79, both repealed but practically re-enacted by rule 91).

Where owing to appeal a party who had been found entitled to expenses was prevented from obtaining extract the Court granted a new decree in his favour, *Gavin v. Henderson & Co.*, 1910, S.C. 357; 47 S.L.R. 460; 1910, 1 S.L.T. 191.

Decision in Appeal against Interlocutor applying Verdict of Jury.— In the case of an appeal against the verdict of a jury, if the judges are equally divided in opinion, the verdict stands. Act of 1907, sec. 31.

If the Court orders a new trial, the Clerk retransmits the process to the Sheriff-Clerk, in order that a date may be fixed for the new trial. Rule 150. The party wishing to proceed has to furnish the Sheriff-Clerk with a certified copy of the interlocutor ordering a new trial. C.A.S., D, iii., 7.

As to expenses where new trial granted, see *Bond v. Dalmeny*

Oil Co. Ltd., 1909, 46 S.L.R. 920; 2 S.L.T. 146; *Nimmo & Co. Ltd. v. Reid*, 1913, S.C. 1002; 50 S.L.R. 789; 1913, 2 S.L.T. 67.

XII. REMOVAL OF CAUSE *OB CONTINGENTIAM*

This matter is not dealt with by the Act of 1907, and is regulated by the Court of Session Act, 1868. Where a cause in the Sheriff Court has contingency with a cause depending in the Court of Session, either party may remove it to the Court of Session. Court of Session Act, 1868, sec. 74. A copy of the record, or of such pleadings as are lodged, and of the interlocutors, certified by the Sheriff-Clerk, is lodged in the process. A motion for the transmission of the inferior Court process is made to the Division of the Court, or the Lord Ordinary before whom the process in regard to which the contingency exists, depends. Act of 1868, sec. 74. If the Court considers there is contingency, warrant to transmit the process is granted. The decision of the Lord Ordinary granting or refusing warrant cannot be appealed against; but the motion may be renewed at any stage of the cause. Act of 1868, sec. 75.

Wilson v. Junor, 1907, 15 S.L.T. 182 (Sheriff Court action for payment transmitted in respect of later Court of Session action of accounting).

Remit *ob contingentiam* does not have the effect of conjunction, *Campbell v. Train*, 1910, S.C. 147; 47 S.L.R. 200; 1909, 2 S.L.T. 458 (*per* L. Kinnear).

XIII. SUSPENSION AND REDUCTION IN THE COURT OF SESSION

Suspension or reduction is a means of redress available in a variety of cases which may be grouped into the following classes, viz. :—

1. To review decrees *in foro* in cases in which no appeal is competent by statute, or where the time for appealing has expired.

Where appeals were abandoned owing to failure to print, suspension was held incompetent, *Watt Brothers v. Foyn*, 1879, 7 R. 126; 17 S.L.R. 54; *Mackenzie v. N.B. Railway Co.*, 1879, 17 S.L.R. 129; *Smith v. Kirkwood*, 1897, 24 R. 872; 34 S.L.R. 652; 5 S.L.T. 22. But see *Lamb v. Thompson*, 1901, 4 F. 88; 39 S.L.R. 80; 9 S.L.T. 220.

2. In certain summary actions in which immediate warrant for execution may be issued, such as removings, warrants to imprison, and the like.

In an action of removing where there is no appeal, suspension is competent, *Fletcher v. Davidson*, 1874, 2 R. 71; 12 S.L.R. 27. See p. 192. But the ordinary method of appeal is competent against an interlocutor refusing decree of removing, and also against other appealable interlocutors in the process other than the decree of removal, *Stirling v. Graham*, 1920, S.C. 4; 57 S.L.R. 58; 1919, 2 S.L.T. 208.

In lawburrows the former method of appeal, viz., by suspension, is no longer competent. The proper mode of review has been held to be by stated case under the Summary Jurisdiction Act, 1908, *Mackenzie v. Maclellan*, 1916, S.C. 617; 53 S.L.R. 452; 1916, 1 S.L.T. 311.

3. To set aside proceedings, decrees, or diligence on the ground of incompetency, informality, or irregularity. For example:—

(a) Where a decree by default was granted without a formal order being pronounced, reduction was held competent, *Macdonald v. Mackessack*, 1888, 16 R. 168; 26 S.L.R. 124.

(b) Where a decree was pronounced before the expiry of the time for lodging defences, reduction was held competent, *Mackenzie v. Munro*, 1894, 22 R. 45; 32 S.L.R. 43.

(c) Suspension before High Court of Justiciary, on ground that subject was under £25 and Sheriff refused to exercise jurisdiction, was held incompetent, *Traill v. Chalmers*, 1883, 10 R. (J.C.) 44; 20 S.L.R. 509.

(d) Where decrees in the Sheriff Court had been extracted, no appeal being taken, reduction was held competent, *Taylor's Trs. v. M'Gavigan*, 1896, 23 R. 945; 33 S.L.R. 707; 3 S.L.T. 107; *Matthewson v. Yeaman*, 1900, 2 F. 873; 37 S.L.R. 681; 8 S.L.T. 23.

(e) Reduction on ground that Sheriff had not exercised jurisdiction by refusing appeal as incompetent was held incompetent, *Earl of Camperdown v. Auchterarder Presbytery*, 1902, 5 F. 61; 40 S.L.R. 45; 10 S.L.T. 336.

(f) Where the Sheriff gave decree for specific performance,

but refused to dispose of the question of expenses so as to render the judgment "final," suspension was held competent, *Caledonian Railway Co. v. Cochrane's Trs.*, 1897, 24 R. 855; 34 S.L.R. 643; 5 S.L.T. 21.

(g) Reduction of award of Sheriff fixing fiars prices, *Walker v. Sheriff of the Lothians*, 1922 S.L.T. 169.

Finality clauses in statutes do not bar actions of reduction laid on relevant grounds, *e.g.*—Crofters' Holdings (Scotland) Act, 1886, *Sitwell v. M'Leod*, 1899, 1 F. 950; 36 S.L.R. 762; 7 S.L.T. 62; Roads and Bridges (Scotland) Act, 1878, *Milne v. Aberdeen D. C.*, 1899, 2 F. 220; 37 S.L.R. 171; 7 S.L.T. 259.

As to competency of reduction of decree in sequestration proceedings, see *Tough's Tr. v. Edinburgh Parish Council*, 1918, S.C. 107; 55 S.L.R. 146; 1917, 2 S.L.T. 265; *Central Motor Engineering Co. v. Gibbs*, 1917, S.C. 490; 54 S.L.R. 384; 1917, 1 S.L.T. 228; and same pursuers against *Galbraith*, 1918, S.C. 755; 55 S.L.R. 702; 1918, 2 S.L.T. 377.

XIV. APPEALS FROM SHERIFF TO COURT OF SESSION UPON STATED CASE

1. Under the Rivers Pollution Prevention Act, 1876, sec. 11.

The decision of the Sheriff may be appealed against by Stated Case, to either Division of the Court, *Lanarkshire C. C. v. Burgh of Airdrie*, 1906, 8 F. 802; 43 S.L.R. 632; 14 S.L.T. 92; but see *Dumfries C. C. v. Langholm Mags.*, 1913, S.C. 307; 50 S.L.R. 209; 1912, 2 S.L.T. 473.

2. Under the Workmen's Compensation Act, 1906 (6 Edw. VII. c. 58), Schedule II. 17 (b).

The Sheriff may be asked to state case on any question of law determined by him, for decision of Court of Session. Procedure is regulated by Codifying Act of Sederunt, L, xiii. See p. 371.

As to appeal where compensation fixed in common law action, see *Stewart v. Perth General Station Committee*, 1923, S.C. 356; 60 S.L.R. 194; 1923 S.L.T. 145.

3. Under the Agricultural Holdings Act, 1923 (13 & 14 Geo. V. c. 10) sec. 16 (2).

Opinion of Sheriff on question of law stated by an arbiter may be appealed to Court of Session. Procedure is regulated by Codifying Act of Sederunt, D, v, 1. See p. 358.

4. Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), sec. 49.

Disputes between the society and its members may in certain cases be determined by the Sheriff, and the opinion of the Court of Session taken upon a question of law.

5. Friendly Societies Acts, 1896-1908 (59 & 60 Vict. c. 25, sec. 68, and 8 Edw. VII. c. 32, sec. 6).

Under these Acts the Sheriff may obtain the opinion of the Court of Session on a question of law by a case stated by him with a view to judgment being given by the Sheriff, *Smith v. Scottish Legal Society*, 1912, S.C. 611; 49 S.L.R. 457; 1912, 1 S.L.T. 270; *Lanark C. C. v. Motherwell Mags.*, 1912, S.C. 1251; 49 S.L.R. 952; 1912, 1 S.L.T. 504.

6. Housing and Town Planning Act, 1909 (9 Edw. VII. c. 44); Housing, Town Planning, etc. (Scotland) Act, 1919 (9 & 10 Geo. V. c. 60); and Housing (Scotland) Act, 1920 (10 & 11 Geo. V. c. 71).

Appeal to the Sheriff is competent against orders of the local authority in regard to houses, and the Sheriff may obtain the opinion of the Court of Session on questions of law with a view to giving judgment.

The procedure in the Sheriff Court is regulated by Codifying Act of Sederunt, L, xiv. See p. 388.

Kirkpatrick v. Maxwelltown Local Authority, 1912, S.C. 288; 49 S.L.R. 261; 1912, 1 S.L.T. 65; *Johnston's Trs. v. Glasgow Corpn.*, 1912, S.C. 300; 49 S.L.R. 269; 1912, 1 S.L.T. 71.

7. Burgh Police Acts, 1892-1903 (3 Edw. VII. c. 33), sec. 10 *et seq.*

Appeal against certain resolutions of the Town Council is competent to the Sheriff, with appeal by stated case to the Court of Session.

Allen & Sons Billposting Ltd. v. Edinburgh Corpn., 1909, S.C. 70; 46 S.L.R. 65; 16 S.L.T. 410; *Cumnock Mags. v. Murdoch*, 1910, S.C. 748; 47 S.L.R. 460; 1910, 1 S.L.T. 8, 312.

The same procedure is competent in regard to County Council resolutions under the Local Government Act, 1908 (8 Edw. VII. c. 62), sec. 11.

8. Elections (Scotland) Corrupt and Illegal Practices Act, 1890 (53 & 54 Vict. c. 55).

See also Town Councils Act, 1900 (63 & 64 Vict. c. 49).

The Sheriff is empowered to grant declarator of disqualification, with power to state a case to the Court of Session.

The procedure is regulated by Codifying Act of Sederunt, L, x. See p. 370. See also Representation of the People Act, 1918 (7 & 8 Geo. v. c. 64).

9. Pilotage Act, 1913 (2 & 3 Geo. v. c. 31), sec. 23
et seq.

Decisions of the pilotage authority may be appealed to the Sheriff with appeal to the Court of Session "on a question of law or a question of mixed law and fact."

The Codifying Act of Sederunt, L, xi., applies to proceedings under the provisions of the Merchant Shipping Act, 1894, which have been superseded by the provisions of the Pilotage Act. See p. 370.

CHAPTER XVII

EXPENSES

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THERE is no express provision in the Act of 1907 requiring that where expenses are desired by a pursuer they must be prayed for. In a defended action this is immaterial. The Court has the inherent power, unless this is qualified by express statutory provision in any particular case, of refusing expenses, or of finding any of the parties to an action entitled to or liable in expenses to all or any of the other parties without express conclusion therefor in the prayer or crave.

Cambuslang Church Committee v. Bryce, 1897, 25 R. 322; 35 S.L.R. 245; *Edington v. Dunbar Laundry Co.*, 1903, 11 S.L.T. 117 (party carrying on unauthorised legal proceedings found liable in expenses); *Mitchell v. Baird*, 1902, 4 F. 809; 39 S.L.R. 681; 10 S.L.T. 119; *Walker v. Walker*, 1903, 5 F. 320; 40 S.L.R. 271; 10 S.L.T. 551 (no conclusion for expenses against party found liable); *Rooney v. Cormack*, 1895, 23 R. 11; 33 S.L.R. 7; 3 S.L.T. 133 (one defender may be found liable to another defender); *Warrand v. Watson*, 1907, S.C. 432; 44 S.L.R. 311; 14 S.L.T. 694 (joint and several liability); *Pollich v. Heatley*, 1910, S.C. 469; 47 S.L.R. 402; 1910, 1 S.L.T. 203; *M'Quater v. Ferguson*, 1911, S.C. 640; 48 S.L.R. 560; 1911, 1 S.L.T. 295.

The general rules do not apply in statutory applications of an administrative nature, in which the Sheriff's powers to deal with expenses depend on the statute, *Liddell v. Ballingry P. C.*, 1908, S.C. 1082; 45 S.L.R. 816; 16 S.L.T. 258.

The question of expenses must be disposed of before a judgment is regarded, or is appealable, as a final judgment.

Fraser v. Fraser, 1903, 11 S.L.T. 70 (if an interlocutor exhausting the cause as regards merits has become final, expenses cannot be thereafter awarded).

I. GENERAL RULES AS TO AWARDING EXPENSES

The awarding or refusing of expenses is a matter for the discretion of the Court; but the general rules observed in dealing with questions of expenses may be summarised as follows:—

1. The party obtaining judgment in his favour is, apart from any special circumstances, entitled to expenses from his opponent.

Feeney v. Fife Coal Co., 1918, S.C. 197; 55 S.L.R. 223; 1918, 1 S.L.T. 129; *Murphy v. Farnie Coal Co.*, 1918, S.C. 659; 55 S.L.R. 557; 1918, 2 S.L.T. 8; *Mikuta v. William Baird & Co. Ltd.*, 1916, S.C. 194; 53 S.L.R. 160; 1915, 2 S.L.T. 396 (Sheriff must exercise his discretion as to expenses); *Murphy v. William Baird & Co. Ltd.*, 1921, S.C. 891; 58 S.L.R. 611; 1921, 2 S.L.T. 183; *Breslin v. Barr & Thornton Ltd.*, 1923, S.C. 90; 60 S.L.R. 66; 1923 S.L.T. 38.

Decree for expenses against parties litigating in a representative character should be pronounced against them as they are designed in the process. Such a decree infers personal liability to the creditor, reserving any rights of relief there may be to the party found liable.

Kilmarnock Theatre Co. v. Buchanan, 1911, S.C. 607; 48 S.L.R. 547; 1911, 1 S.L.T. 225; cf. *Fulwood, Ltd. v. Dumfries Harbour Comrs.*, 1907, S.C. 735; 44 S.L.R. 566; 14 S.L.T. 864.

Exceptions to this rule are found in the following cases:—

(a) Actions raised to determine questions arising out of the administration of trusts and involving the construction of testamentary writings. In such actions all parties are usually found entitled to expenses out of the trust funds.

Wordie's Trs. v. Wordie, 1916, S.C. (H.L.) 126; 53 S.L.R. 291; 1916, 1 S.L.T. 246.

An action for determining the domicile of a deceased person

was held not to form an exception to the above general rule, *Brooks v. Brooks' Trs.*, 1902, 4 F. 1014; 39 S.L.R. 816; 10 S.L.T. 217. Questions as to construction of a statute follow the general rule, *Dundas' Trs. v. Dundas' Trs.*, 1912, S.C. 375; 49 S.L.R. 417; 1912, 1 S.L.T. 141. See also *Bannerman's Trs. v. Bannerman*, 1915, S.C. 398; 52 S.L.R. 315; 1915, 1 S.L.T. 143; and *Turnbull's Trs. v. Lord Advocate*, 1918, S.C. (H.L.) 88; 55 S.L.R. 208; 1918, 1 S.L.T. 112; *Letham v. Evans*, 1918, 1 S.L.T. 27.

(b) Consistorial Causes.

(c) Actions necessary to remove a justifiable objection to a title.

2. A successful party may, in various circumstances, be refused expenses.

M'Donald v. M'Donald, 1879, 6 R. 1011; 16 S.L.R. 602; *Ewart v. Brown*, 1882, 10 R. 163; 20 S.L.R. 105 (assault by schoolmaster); *Edward v. Edward*, 1879, 6 R. 1255; 16 S.L.R. 602; *Collins v. Collins*, 1882, 10 R. 250 (co-defender in divorce case); *Shepherd v. Elliot*, 1896, 23 R. 695; 33 S.L.R. 495; 3 S.L.T. 330 (conduct of successful party); *Robb v. Logiealmond S. B.*, 1875, 2 R. 698; 12 S.L.R. 469 (refusal of retiring allowance to schoolmaster without stating reasons); *Campbell v. Ritchie & Co.*, 1907, S.C. 1097; 44 S.L.R. 766; 15 S.L.T. 165 (unsuccessful action for libel justified by terms of publication); *Wood v. Mackay*, 1906, 8 F. 625; 43 S.L.R. 458; 13 S.L.T. 963 (evidence unsatisfactory not ground for refusing expenses); *Armour v. Duff & Co.*, 1912, S.C. 120; 49 S.L.R. 124; 1911, 2 S.L.T. 394 (misleading averments in defences); *Robinson v. National Bank Ltd.*, 1916, S.C. (H.L.) 154; 53 S.L.R. 390; 1916, 1 S.L.T. 336.

In actions of damages, other than actions for defamation or libel, the provisions of the Codifying Act of Sederunt, F, iii., 3, may be applied in the event of the case being appealed for trial in the Court of Session. Under this rule the pursuer, if awarded less than £50, is only entitled to one-half of his taxed expenses unless the judge certifies that he is entitled to a larger amount, which is not to exceed two-thirds. This applies to an action originating in the Sheriff Court, but only to the expenses in the Court of Session, *Geddes v. M'Lellan*, 1908, S.C. 941; 45 S.L.R. 720; 16 S.L.T. 122; *Hughes v. Allens*, 1909, S.C. 1210; 46 S.L.R. 83; 1909, 2 S.L.T. 17; *Thomson v. Glasgow Taxi-Cab Co. Ltd.*, 1911, 1 S.L.T. 375.

The rule was applied in an action based on slander, but in which issue of wrongous apprehension only was allowed, *Hughes v. Morgan*, 1910, S.C. 712; 47 S.L.R. 637; 1910, 1 S.L.T. 364.

Where separate actions are raised in respect of the same

subject-matter against the same defender unnecessary duplication of expenses will not be allowed against an unsuccessful party. Expenses will be dealt with according to the circumstances of each case, *Adam v. Rio Grande Rubber Estates Ltd.*, 1915, S.C. 484; 52 S.L.R. 365; 1915, 1 S.L.T. 225.

Barrie v. Scottish Motor Traction Co., 1920, S.C. 704; 57 S.L.R. 612; 1920, 2 S.L.T. 145.

3. A successful party may, in exceptional cases, be found liable in expenses to the unsuccessful party.

Such cases are the following:—

(a) Where defenders were held to have wrongfully withheld information which would have prevented pursuer raising unsuccessful action, *Barrie v. Caledonian Railway Co.*, 1902, 5 F. 30; 40 S.L.R. 50; 10 S.L.T. 333.

(b) Where a defender is held bound to implement a contract of sale of heritage, but his objection to the title is held to be such as to justify him obtaining a decree of the Court to make the title unchallengeable, *Walter's Trs. v. O'Mara*, 1902, 9 S.L.T. 395 (objection unfounded but not frivolous; defender entitled to expenses); *Howard & Wyndham v. Richmond's Trs.*, 1890, 17 R. 990; 27 S.L.R. 800; *Walker v. Galbraith*, 1895, 23 R. 347; 33 S.L.R. 246; 3 S.L.T. 214; *Leask v. Johnstone*, 1886, 24 S.L.R. 78. But see *Lamb's Trs. v. Reid*, 1883, 11 R. 76; 21 S.L.R. 75; *Cameron v. Williamson*, 1895, 22 R. 293; 32 S.L.R. 222; 2 S.L.T. 450 (objection unfounded; defender liable in expenses); *Roscoe v. Mackersy*, 1905, 7 F. 761; 42 S.L.R. 453; 12 S.L.T. 853; *Harland Engineering Co. v. Stark's Trs.*, 1914, 2 S.L.T. 292.

(c) Where Gaming Acts were given effect to by judge although defender did not state plea thereon, *Hamilton v. M'Lauchlan*, 1908, 16 S.L.T. 341.

(d) Where defenders were held bound to deliver over documents, but were justified in obtaining the decision of the Court, in view of the conduct of the pursuers, *Dumbarton Mags. v. Edinburgh University*, 1909, 1 S.L.T. 51.

(e) Where parties failed to bring authorities before Court, *Baker v. Glasgow Corporation*, 1916, S.C. 199; 53 S.L.R. 183; 1915, 2 S.L.T. 330.

4. Where success has been divided, expenses may not be awarded to either party, or one party may be found entitled to expenses subject to modification.

Where an action was sisted in respect of an arbitration clause, and defender was unsuccessful on the merits in the arbitration proceedings, no expenses in the action were given to either party,

Robertson v. Brandes, etc., 1907, S.C. 1158; 44 S.L.R. 899; 15 S.L.T. 330.

5. Where an action is raised with the consent and concurrence of a party, it is the pursuer and not the consentor who is liable in expenses; but a person, though nominally only a consentor, who has a direct and substantial interest in the result, or who takes an active part in the litigation, may render himself liable.

The following have been held liable :—

(a) Husband consenting to action by wife for aliment of illegitimate child, *Lindsay v. Kerr*, 1891, 28 S.L.R. 267.

(b) Husband promoter of, or taking personal interest in, action at wife's instance, *M'Gowan v. Cramb*, 1898, 25 R. 634; 35 S.L.R. 494; 5 S.L.T. 375; *Maxwell v. Young*, 1901, 3 F. 638; 38 S.L.R. 443; 8 S.L.T. 471; *Schmidt v. Caledonian Railway Co.*, 1903, 5 F. 648; 40 S.L.R. 460; 10 S.L.T. 683. But see *Picken v. Caledonian Railway Co.*, 1901, 4 F. 39; 39 S.L.R. 31; 9 S.L.T. 216; *Kerr v. Malcolm*, 1906, 14 S.L.T. 358; *M'Ilwaine v. Stewart's Trs.*, 1914, S.C. 934; 51 S.L.R. 831; 1914, 2 S.L.T. 127; also *Whitehead v. Blaik*, 1893, 20 R. 1045; 30 S.L.R. 916; 1 S.L.T. 172; *Herriot v. Jacobsen*, 1909, 2 S.L.T. 57, 152.

The consent of the husband to an action at the instance of his wife is now unnecessary. Married Women's Property (Scotland) Act, 1920.

(c) Father of minor taking active part in litigation, *Fraser v. Cameron*, 1892, 19 R. 564; 29 S.L.R. 446; *Rodger v. Weir*, 1917, S.C. 300; 54 S.L.R. 254; 1917, 1 S.L.T. 114. But otherwise, *Armstrong v. Thomson*, 1895, 2 S.L.T. 537; *Currie v. Cowan & Co.*, 1911, 2 S.L.T. 467.

(d) Father of pupil pursuing action on behalf of pupil, *White v. Steel*, 1894, 21 R. 649; 31 S.L.R. 542; 1 S.L.T. 575; *Wilkinson v. Kinneil, etc.*, *Coal Co.*, 1897, 24 R. 1001; 34 S.L.R. 533; 4 S.L.T. 349.

As to obtaining decree against a *dominus litis* without a separate action, see *Kerr v. Employers' Liability Assurance Corp'n. Ltd.*, 1899, 2 F. 17; 37 S.L.R. 21; 7 S.L.T. 179; *Muzgany v. Dunedin Steamship Co. Ltd.*, 1908, 16 S.L.T. 392; *Harvey v. Glasgow Corp'n.*, 1915, S.C. 600; 52 S.L.R. 395; 1915, 1 S.L.T. 286.

6. A finding for expenses means expenses as between party and party, unless expressly stated to be as between agent and client.

Fletcher's Trs. v. Fletcher, 1888, 15 R. 862; 25 S.L.R. 606.

Exceptions to the rule are found in the following cases :—

(a) Consistorial Causes.

Grant v. Grant, 1906, 43 S.L.R. 109; 14 S.L.T. 516. The exception does not extend to action for custody of child, *A. B. v. C. D.*, 1906, 8 F. 973; 43 S.L.R. 731; 14 S.L.T. 170; *Petrie v. Petrie*, 1911, 1 S.L.T. 410; *Wright v. Wright*, 1910, 1 S.L.T. 168 (rule applied in Sheriff Court).

(b) Petitions for winding up limited companies.

M'Gregor v. Ballachulish Slate Quarries Co. Ltd., 1908, S.C. 1; 45 S.L.R. 9; 15 S.L.T. 397.

(c) Cases in which trustees who are litigants have been found entitled in special circumstances to be kept *indemnitis*.

Peat's Trs. v. Peat, 1901, 38 S.L.R. 269; *Neilson v. Stewart's Trs.*, 1905, 42 S.L.R. 434; 12 S.L.T. 785; *Insurance Trust, etc., Liquidator v. Inches*, 1905, 13 S.L.T. 556 (test case in liquidation); *Merrilees v. Leckie's Trs.*, 1908, 45 S.L.R. 449; 15 S.L.T. 912 (unsuccessful trustees found entitled to expenses as between agent and client of defending an action for the reduction of a trust deed).

Where it is intended that expenses should be taxed as between agent and client it should be expressly so stated, *M'Gregor's Trs. v. Kimbell*, 1912, S.C. 261; 49 S.L.R. 214; 1912, 1 S.L.T. 14.

7. A judgment in favour of the defender in a cause to which the Public Authorities Protection Act, 1893, applies, carries costs as between agent and client.

This Act applies to any action, prosecution, or other proceeding "against any person for any act done in pursuance, or execution, or intended execution, of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty, or authority." Sec. 1.

Under the Act it has been held that—

(a) The Court has no discretion in cases to which the Act applies, but must grant expenses as between agent and client, *Montgomerie, Ltd. v. Haddington Mags.*, 1906, 14 S.L.T. 183; but see *Aird v. Tarbert School Board*, 1907, S.C. 22 and 305; 44 S.L.R. 223; 14 S.L.T. 387; *Inverness C. C. v. Burgh of Inverness*, 1908, 15 S.L.T. 966.

(b) The section applied although the Act was only founded on after the closing of the record, *Christie v. Glasgow Corpn.*, 1899,

36 S.L.R. 694; 7 S.L.T. 27. See also *Hunter v. Dundee Water Commissioners*, 1920, S.C. 628; 57 S.L.R. 558; 1920, 2 S.L.T. 49.

(c) The provision as to expenses does not apply in the case of an action absolutely barred by a statute other than the Act in question, *Davidson v. Anderson*, 1905, 13 S.L.T. 298.

(d) The interlocutor must bear that expenses are allowed as between agent and client or the ordinary rule will apply, *Aberchirder Mags. v. Banff D. C.*, 1906, 8 F. 571; 43 S.L.R. 409; 13 S.L.T. 906.

See also *Aird v. Tarbert School Board*, *supra* (question whether Act applies where absolver granted of consent); *Somerville v. E. & D. Water Trust*, 1907, S.C. 355; 44 S.L.R. 267; 14 S.L.T. 662 (motion after appeal to House of Lords held too late); *Walsh v. Pollokshaws Mags.*, 1907, 14 S.L.T. 845; *Montgomerie & Co. v. Haddington Mags.*, 1908, S.C. 127; 45 S.L.R. 73.

8. Where there are several defenders, special rules may be applicable.

(1) Defenders having a common interest should combine in conducting their defence, and will not each be allowed full expenses.

Each defender is generally entitled to the expenses of lodging his defence; but on the record being closed there should be joint action, and thereafter the expense of one representation only will be allowed, including possibly watching fees, *Burrell v. Simpson*, 1877, 4 R. 1133; 14 S.L.R. 667; *Duncan v. Salmond*, 1874, 1 R. 839; *Stott v. Fender*, 1878, 16 S.L.R. 5; *Cockburn v. City Club*, 1905, 12 S.L.T. 678; *Anderson v. McCracken Brothers*, 1900, 2 F. 780; 37 S.L.R. 587; 7 S.L.T. 427; *Canada Copper Co. v. Peddie and Others*, 1877, 5 R. 393; 15 S.L.R. 274; *Cameron v. French*, 1893, 1 S.L.T. 259.

Karrman v. Crosbie, 1898, 25 R. 931; 35 S.L.R. 725; 6 S.L.T. 45 (four separate actions against four defenders who united in the defence; pursuers found entitled to expenses against two unsuccessful defenders and liable to two successful defenders in one-half of the expenses of the joint defence); *Crawford v. Adams*, 1900, 3 F. 296; 38 S.L.R. 216; 8 S.L.T. 343.

(2) If the defenders have separate interests they need not combine, and if both are successful they each get expenses from the pursuer in the ordinary way. If the one succeeds and the other does not, the question as to expenses between them depends on the circumstances.

Welsh v. Eastern Cemetery Co., 1894, 31 S.L.R. 687; 2 S.L.T.

55; *Caledonian Railway Co. v. Greenock Sacking Co.*, 1875, 2 R. 671; 12 S.L.R. 443; *Robertson v. Stewart*, 1875, 2 R. 970; *Glasgow Feuing Co. v. Watson's Trs.*, 1887, 14 R. 718; 24 S.L.R. 512.

Where defenders are found liable in expenses jointly and severally, if one pays the whole he is entitled to an assignation of the decree, *Mackay v. Mackay*, 1896, 4 S.L.T. 200.

As to liability of each of several defenders where actions have been unnecessarily multiplied, see *O'Reilly v. Turnbull*, 1908, 16 S.L.T. 519.

(3) An unsuccessful defender may be found liable in expenses to a successful defender.

This is the ordinary practice in an action of relief by one parish against two other parishes. The application of the rule to other cases is a question of circumstance, *Rooney v. Cormack*, 1895, 23 R. 11; 33 S.L.R. 7; 3 S.L.T. 133; *Thomson v. Edinburgh Tramway Co.*, 1901, 3 F. 355; 38 S.L.R. 263; 8 S.L.T. 352; *Mackintosh v. Galbraith*, 1900, 3 F. 66; 38 S.L.R. 53; 8 S.L.T. 241; *Morrison v. Waters*, 1906, 8 F. 867; 43 S.L.R. 646; 14 S.L.T. 127; *Craig v. Aberdeen Harbour Comrs.*, 1909, 1 S.L.T. 314; *Arthur v. Lindsay*, 1895, 22 R. 904; 32 S.L.R. 680; 3 S.L.R. 83 (one of three defenders represented by same agent entitled to expenses, held only entitled to one-third of whole account); *Grangemouth, etc., Towing Co. Ltd. v. Steamship River Clyde Co. Ltd.*, 1908, 16 S.L.T. 638; *Laing v. Paull & Williamsons*, 1912, S.C. 196; 49 S.L.R. 108; 1911, 2 S.L.T. 437; *Davie v. Blair*, 1912, 1 S.L.T. 420; *Kennedy v. Shotts Iron Co. Ltd.*, 1913, S.C. 1143; 50 S.L.R. 885; 1913, 2 S.L.T. 121; *Taylor v. Glasgow Corporation*, 1919, S.C. 511; 56 S.L.R. 458; 1919, 2 S.L.T. 26 (one defender found liable in expenses to pursuer and other defender).

9. Where expenses of any part of a case have been expressly reserved, and are not thereafter specifically dealt with, a general finding of expenses carries the reserved expenses.

Gardiner v. Victoria Estates Co., 1885, 13 R. 80; 23 S.L.R. 55; *Caledonian Railway Co. v. Chisholm*, 1889, 16 R. 622; 26 S.L.R. 489; *Parnell v. Walter*, 1890, 17 R. 552; 27 S.L.R. 443.

A finding that expenses of any particular branch of the case are to be "expenses in the cause" carries them to the party ultimately found entitled to expenses generally, *Glasgow and South-Western Railway Co. v. Ayr Mags.*, 1911, S.C. 298; 48 S.L.R. 211; 1911, 1 S.L.T. 176, overruling *Alston & Orr v. Allan*, 1910, S.C. 304; 47 S.L.R. 255; 1910, 1 S.L.T. 78.

10. Modification of expenses does not interfere with the ordinary rules of taxation.

M'Elroy v. Tharsis Sulphur Co., 1879, 6 R. 1119; 16 S.L.R. 682; *Strang v. Brown*, 1882, 19 S.L.R. 890; *Arthur v. Lindsay*, 1895, 22 R. 904; 32 S.L.R. 680; 3 S.L.T. 82; *Wemyss Trs. v. Hope*, 1903, 11 S.L.T. 187; *Craig v. Craig*, 1906, 44 S.L.R. 100; 14 S.L.T. 469.

Where expenses of a particular part of a case have been modified, the party, if ultimately found entitled to the whole expenses, cannot obtain more than the amount so modified though the expenses of that part may in fact exceed the modified sum. An interim award is, however, a payment to account, *Cameron v. Waterston & Co.*, 1861, 23 D. 535; 33 J. 272.

11. Payment of expenses decerned for may be a condition of further proceedings.

(1) The non-payment of expenses in one case is no bar to the pursuer subsequently raising against the same defender a separate action having no connection with the prior action.

Stuart v. Moss, 1886, 13 R. 572; 23 S.L.R. 532 (first action on contract; second action on slander contained in letters breaking off the contract).

(2) If the second action relates to the same subject-matter, payment of expenses of the first action may be made a condition of allowing further proceedings.

Wilson v. Crichton, 1898, 5 S.L.T. 350 (action unsuccessful in one Court, thereafter raised in another); *Wallace v. Henderson*, 1876, 4 R. 264; 14 S.L.R. 181; *Irvine v. Kinloch*, 1885, 13 R. 172; 23 S.L.R. 112 (pursuer failed in action of reduction of a will, and then raised an action of accounting against executor); *M'Murphy v. Macchullich*, 1889, 16 R. 678; 26 S.L.R. 421 (new averments); *Paton v. Paton*, 1901, 9 S.L.T. 281; 10 S.L.T. 633 (divorce; interim award not paid; further procedure barred); *Duff v. Duff*, 1905, 13 S.L.T. 447. But see *Byers' Trs. v. Gemmell*, 1896, 4 S.L.T. 21; *Begbie v. Begbie*, 1897, 5 S.L.T. 82 (second action of divorce allowed, without payment of expenses of prior action, which was raised upon different ground); *Sommervell v. Tait*, 1908, 16 S.L.T. 139 (second petition on same grounds).

(3) Where a party obtains the privilege of being reponed against a decree, the expenses, as a rule, are ordered to be paid before he can proceed.

M'Carthy v. Emery, 1897, 24 R. 610; 34 S.L.R. 455; 4 S.L.T. 332.

12. All questions as to the liability for expenses, or modification of the amount, or the scale of taxation, as distinguished from details of audit and taxation, should be determined before the remit to the Auditor. Such questions cannot, as a rule, be raised by way of objection to the Auditor's report.

Fletcher's Trs. v. Fletcher, 1888, 15 R. 862; 25 S.L.R. 606; *Mackellar v. Mackellar*, 1898, 25 R. 883; 35 S.L.R. 695; 6 S.L.T. 18 (taxation as between agent and client); *Electric Construction Co. v. Hurry*, 1897, 24 R. 525; 34 S.L.R. 295; 4 S.L.T. 289 (apportionment); *Macfie v. Blair*, 1884, 22 S.L.R. 224 (liability); *Downie's C. B. v. Macfarlane's Trs.*, 1895, 23 R. 80; 33 S.L.R. 53; 3 S.L.T. 134 (separate defences); *O'Reilly v. Turnbull*, 1908, 16 S.L.T. 519; *Murray v. Rennie & Angus*, 1897, 24 R. 1026; 34 S.L.R. 709; 5 S.L.T. 80 (scale of taxation); *Warrand v. Watson*, 1907, S.C. 432; 44 S.L.R. 311; 14 S.L.T. 694 (joint and several liability); *Fulwood, Ltd. v. Dumfries Harbour Comrs.*, 1907, S.C. 735; 44 S.L.R. 566; 14 S.L.T. 864; *Anderson's Trs. v. Donaldson & Co.*, 1908, 15 S.L.T. 702; *Mickel v. M'Coard*, 1913, S.C. 1036; 50 S.L.R. 853; 1913, 2 S.L.T. 106 (scale); *Young and Ors. v. Burgh of Darvel*, 60 S.L.R. 485; 1923 S.L.T. 439 (extent of liability).

13. The expenses of an action must be dealt with in the action itself. A separate action for the expenses is incompetent.

Young v. Nith Comrs., 1880, 7 R. 891; 17 S.L.R. 637; *Wood v. Wood's Trs.*, 1904, 6 F. 640; 41 S.L.R. 489; 11 S.L.T. 20; *M'Dowall v. Stewart*, 1871, 10 M. 193. But, *contra*, *Clark v. Henderson*, 1875, 2 R. 428; 12 S.L.R. 306 (exception in case of wife's agent's claim to recover expenses from husband); *Cullen's Exrs. v. Kilmarnock Theatre Co.*, 1913, 1 S.L.T. 290; 1914, 2 S.L.T. 334.

14. **Appeal on Question of Expenses.**—Appeal on the question of expenses is competent, but it may be stated generally, both with respect to appeal from Sheriff-Substitute to Sheriff and from Sheriff Court to Court of Session, that such appeals are discouraged. To ensure consideration of such an appeal there would require to be (a) a case amounting to miscarriage of justice, or (b) a

question of principle involved, or (c) an amount of expenses at stake out of proportion to the merits of the cause.

Fleming v. N. of S. Banking Co., 1881, 9 R. 11; 19 S.L.R. 4; *Bowman's Trs. v. Scott's Trs.*, 1901, 3 F. 450; 38 S.L.R. 357; *Barrie v. Caledonian Railway Co.*, 1902, 5 F. 30; 40 S.L.R. 50; 10 S.L.T. 333; *Caldwell v. Dykes*, 1906, 8 F. 839; 43 S.L.R. 606; 14 S.L.T. 67; *Wyllie v. Fisher*, 1907, S.C. 686; 44 S.L.R. 506; 14 S.L.T. 894; *Garrioch v. Glass*, 1911, S.C. 453; 48 S.L.R. 347; 1 S.L.T. 89; *Jack v. Black*, 1911, S.C. 691; 48 S.L.R. 586; 1911, 1 S.L.T. 320.

II. EFFECT OF TENDER ON QUESTION OF EXPENSES

The lodging of a minute of tender may have important results on the question of expenses. The rules generally followed may be summarised thus :—

1. In order to be effective, a tender must include the expenses of process to date.

Aitchison v. Steven, 1864, 3 M. 81; *Addison v. Kelloch*, 1906, 14 S.L.T. 410.

This will include the expenses of considering and accepting the tender and taking the case out of Court, *Irvin v. Fairfield Shipbuilding Co.*, 1899, 1 F. 595; 36 S.L.R. 473; 6 S.L.T. 342; *Nixon v. N.B. Railway Co.*, 1882, 20 S.L.R. 160.

2. If a tender is not accepted, and subsequently the pursuer is found entitled to expenses, he is entitled to the expense of considering the declined tender.

M'Dougal v. Caledonian Railway Co., 1878, 5 R. 1011; 15 S.L.R. 663; *Irvin v. Fairfield Shipbuilding Co.*, *supra*.

3. If the tender is not timeously accepted, but is accepted ultimately, the pursuer will be entitled to expenses of the action to the date of the tender, but the defender will be entitled to expenses subsequent to that date. What is timeous acceptance is a question of circumstances.

M'Laughlin v. Glasgow Tramway Co., 1897, 24 R. 992; 5 S.L.T. 74 (tender lodged on 21st June, accepted 26th June; Court found pursuers entitled to expenses up to 24th June, and defenders thereafter); *Macrae v. Edinburgh Street Tramway Co.*, 1885, 13 R. 265; 23 S.L.R. 185 (acceptance of tender after notes of intended award issued, held too late); *Jack v. Black*, 1911, S.C. 691; 48 S.L.R. 586; 1910, 2 S.L.T. 228 (reasonable time allowed). The expenses in the

natural progress of the case only will be allowed, *Jacobs v. Provincial Motor Co. Ltd.*, 1910, S.C. 756; 47 S.L.R. 634; 1910, 1 S.L.T. 392; *Gillies v. Clyde Navigation Trs.*, 1916, 2 S.L.T. 298.

4. If the tender is not accepted and the pursuer obtains decree for more than the sum tendered, the tender has no effect on the question of expenses.

5. If the tender is not accepted and the pursuer obtains decree for less than the sum tendered, he will be entitled to expenses up to the date of the tender, and the defender will be entitled to expenses after that date.

Greig v. Balfour, 1898, 25 R. 794; 35 S.L.R. 597; 5 S.L.T. 378; *Cutlar v. M'Leod's Trs.*, 1876, 13 S.L.R. 308 (no expenses to either party); *Brodie v. M'Gregor*, 1901, 4 F. 93; 39 S.L.R. 87; 9 S.L.T. 236. The rule was applied where a sum was tendered as compensation under the Workmen's Compensation Act, while the decree was for damages under the Employers' Liability Act, *Black v. Fife Coal Co. Ltd.*, 1909, S.C. 152; 46 S.L.R. 191; 16 S.L.T. 557.

6. As a general rule, offers made in correspondence, whether before an action is raised or in the course of the process, have no effect on the question of expenses.

Exceptions to this rule are cases in which the attitude of parties forms a relevant subject of inquiry, *Penny v. Thomson, Aikman & Co.*, 1893, 1 S.L.T. 140. Also where offers in correspondence are founded on or repeated on record, *Gunn v. Hunter*, 1886, 13 R. 573; 23 S.L.R. 395; *Little v. Burns*, 1881, 9 R. 118; 19 S.L.R. 105; *Critchley v. Campbell*, 1884, 11 R. 475; 21 S.L.R. 326; *Miller v. M'Phun*, 1895, 22 R. 600; 32 S.L.R. 471; 3 S.L.T. 6; *Wick v. Wick*, 1898, 1 F. 199; 36 S.L.R. 180; *Bryden v. Devlin*, 1899, 6 S.L.T. 297; *Nash v. Smith*, 1894, 2 S.L.T. 318; *Riddell v. Lanarkshire, etc., Railway Co.*, 1904, 6 F. 432; 41 S.L.R. 319; 11 S.L.T. 689.

7. No question of expenses arises previous to the actual service of the writ. If a defender pays the sum due before service, he is not liable for the cost of an unserved summons.

Mintons v. Hawley, 1882, 20 S.L.R. 126; *Mags. of Leith v. Lennon*, 1881, 18 S.L.R. 313 (expenses of summons found not due where no previous demand made).

8. In an action for vindication of character, a tender of a sum of damages has not the same effect as in other

cases, as a pursuer is entitled to have his character cleared. To make a tender effective, the minute must contain a retraction of and apology for the slander.

Mitchell v. Nicol, 1890, 17 R. 795; *Hunter v. Russell*, 1901, 3 F. 596; 38 S.L.R. 420; 8 S.L.T. 476; *Davidson v. Panti*, 1915, 1 S.L.T. 273.

This rule was not applied to a tender in an action of damages for breach of promise in which defamatory statements were made on record, *Brodie v. M'Gregor*, 1901, 39 S.L.R. 87; 9 S.L.T. 236.

9. A tender must be free from qualification.

Low v. Spence, 1895, 3 S.L.T. 170; *Thomson v. Dailly*, 1896, 24 R. 1173; 34 S.L.R. 850; 4 S.L.T. 261; *Reid & Co. v. Firth & Stott*, 1886, 23 S.L.R. 845; *Tobiasen v. Isle of Man Steam Packet Co.*, 1893, 1 S.L.T. 272.

Where there are separate pursuers with conflicting claims, a tender should be apportioned by the defender, *Boyle v. Olsen*, 1912, S.C. 1235; 49 S.L.R. 894; 1912, 2 S.L.T. 114; see also *John Hamilton & Co. v. John Fleming & Co. Ltd.*, 1918, 1 S.L.T. 229.

III. TAXATION OF EXPENSES

In all cases, expenses, unless modified at a fixed amount, must be taxed before decree is granted for them. Act of 1907, rule 99.

Upon expenses being awarded, the account thereof is lodged in process and then borrowed and submitted to the Auditor, a copy being sent to the opposite party. The account is then taxed by the Auditor in presence of the agents, and the amount of the account as allowed by him is stated in his report annexed to the account.

As to power of a party to keep a process in dependence by delaying to lodge account, see *Porteous v. Caledonian Railway Co.*, 1891, 29 S.L.R. 21.

General Rules of Taxation.—The Act of 1907, sec. 40, provides that the Court of Session may, by Act of Sederunt, regulate the fees of agents, officers, shorthand writers, and others; and, with the concurrence of the Treasury, regulate the fees of Court.

The fees of Court originally dealt with by Act of Sederunt, dated 7th March, 1908, superseded by the Codify-

ing Act of Sederunt, M, i., are now laid down by Act of Sederunt of 22nd February, 1922, printed in Appendix, p. 423.

The fees of agents were dealt with by Act of Sederunt of 10th April, 1908, now C.A.S., M, ii., which will be found in Appendix, p. 392.

The following are the General Regulations laid down in the Act of Sederunt :—

1. In the ordinary Sheriff Court there are two scales of taxation—(a) for causes where the amount of principal concluded for does not exceed £50, and (b) for causes exceeding that amount. C.A.S., M, ii., 1.

The general rules to be applied in determining which scale is applicable are as follows :—

(1) In the ordinary case the scale is determined by the principal sum concluded for. C.A.S., M, ii., 2 (1).

(2) In actions of damages the scale is regulated between party and party as regards pursuer's account, unless the Sheriff directs otherwise, by the sum decerned for. C.A.S., M, ii., 2 (3).

(3) In ordinary removings and ejections, the amount of yearly rent determines the scale. If the rent is not set forth as exceeding £50, the charges are according to scale 1. C.A.S., M, ii., 4.

(4) Where the pecuniary amount or value of the question in dispute cannot be ascertained from the process, the Sheriff determines the scale. C.A.S., M, ii., 5.

(5) In cases not exceeding £50, where the amount does not truly represent the nature and importance of the case, the Sheriff may direct taxation on the higher scale. C.A.S., M, ii., 2 (2).

(6) In all cases the Sheriff may direct expenses to be taxed according to the scale applicable to the amount decerned for. C.A.S., M, ii., 2 (1).

2. Where the demand made does not exceed the value which may be competently concluded for in the Small Debt

Court, only Small Debt expenses are to be allowed, unless the Sheriff appoints otherwise. C.A.S., M, ii., 2 (4).

3. Where the principal amount decerned for does not exceed £20, the Sheriff may allow Small Debt expenses only. C.A.S., M, ii., 2 (5).

4. In all cases the Sheriff may appoint that expenses are to be subject to modification. C.A.S., M, ii., 1.

5. The Sheriff may disallow charges for papers or parts of papers, or particular procedure or agency which he considers irregular or unnecessary. C.A.S., M, ii., 10.

Where less than £50 of damages are awarded, lower scale may be held applicable, although there are conclusions for performance, *Murray v. Rennie & Angus*, 1897, 24 R. 1026; 34 S.L.R. 709.

A party (not being a law agent) conducting his own case is not entitled to charge for his trouble and loss of time. Question whether he is entitled to reasonable outlays, *Forbes v. Whyte*, 1891, 18 R. 688; 28 S.L.R. 486. A party giving evidence is entitled to be paid as a witness, *Dairon v. Dairon's Trs.*, 1900, 3 F. 230; 38 S.L.R. 179; 8 S.L.T. 237; *Woodward v. Woodward*, 1910, 2 S.L.T. 248; *Dalton & Co. v. Boyle & Co.*, 1910, 26 Sh. Ct. Rep. 53. See also *John Dewar & Sons, Ltd. v. N.B. Railway Co.*, 1920, 36 Sh. Ct. Rep. 111 (travelling outlays); *Cochran v. Paton & Co.*, 1920, 36 Sh. Ct. Rep. 118 (witnesses' fees).

Where expenses had been taxed in Sheriff Court on the lower scale in view of value of the cause, and the Court thereafter held the value above the limit, it sustained the Sheriff Court taxation, *Abrahams, Ltd. v. Campbell*, 1911, 48 S.L.R. 456; 1911, 1 S.L.T. 359.

The rules as to scale do not necessarily apply as between agent and client, *Welsh v. M'Millan*, 1912, 28 Sh. Ct. Rep. 305.

As to scale in actions of ejection, see *Stark v. Harland Engineering Co.*, 1915, 31 Sh. Ct. Rep. 277; *Tod v. Sinclair*, 1922, 38 Sh. Ct. Rep. 114; and as to scale where crave restricted see *M'Innes v. Finlay*, 1917, 33 Sh. Ct. Rep. 3.

6. The expense of counsel employed in the Sheriff Court is only allowed as part of the expense of the process, when authorised or sanctioned by the Court. C.A.S., M, ii., Table of Fees, i. 16.

The employment of counsel is limited to appearance in Court unless in exceptional cases.

Sanction may be given at any time before the audit, *Purvis v.*

Dowie, 1869, 7 M. 764; 41 J. 464; *M'Kerchar v. M'Quarrie*, 1887, 14 R. 1038 (certificate produced after audit held good); *Reid v. Orkney C. C.*, 1912, S.C. 627; 49 S.L.R. 511; 1912, 1 S.L.T. 310. But if not allowed by the Sheriff, the Court on appeal will not interfere, *Mackenzie v. Blakeley*, 1879, 7 R. 51; 17 S.L.R. 5; *Wood's Trs. v. Wood*, 1900, 2 F. 870; 37 S.L.R. 671; 8 S.L.T. 34 (note by clerk that case to be heard on particular day to suit counsel not sufficient); *Alpine v. Dumbarton Hers.*, 1908, 16 S.L.T. 388 (circumstances in which sanction held to include senior counsel); *Taylor v. Steel-Maitland*, 1913, S.C.; 50 S.L.R. 776; 1913, 2 S.L.T. 29 (sanction by Sheriff of fees to counsel allowed, though interlocutor recalled); *Cochran v. Paton*, 1920, 36 Sh. Ct. Rep. 3; *Elliott v. N.B. Railway Co.*, 1922, 38 Sh. Ct. Rep. 17.

7. Charges of skilled witnesses for making investigations in order to qualify them to give evidence at a proof or trial may be allowed, provided such witnesses are certified by the judge who tries the case. Sanction must be obtained by motion either at the proof or trial, or when leave is asked to abandon the case, or within eight days of any interlocutor disposing of the case. C.A.S., M, ii., Table of Fees, x.

Where case settled before trial, certificate was held unnecessary, *Clements v. Edinburgh Corpn.*, 1905, 7 F. 651; 42 S.L.R. 536; 13 S.L.T. 59; *Sneddon v. Batou Collieries*, 1922, S.C. 83; 59 S.L.R. 147; 1922 S.L.T. 53.

Omission to obtain the certificate cannot be remedied on appeal, *Gibson v. West Lothian Oil Co.*, 1887, 14 R. 578; 24 S.L.R. 420.

The additional allowance is for previous special preparation only, *Ebbw Vale Co. v. Murray*, 1898, 25 R. 925; 35 S.L.R. 759; 6 S.L.T. 42; *Ferguson v. Johnston*, 1886, 13 R. 635; 23 S.L.R. 508; *Govan v. M'Killop*, 1909, S.C. 562; 46 S.L.R. 416; 1909, 1 S.L.T. 168.

It has been held that it is not sufficient to enrol the case within the eight days, *Macdonald v. Robertson*, 1912, 27 Sh. Ct. Rep. 103; *Black v. Crawford*, 1912, 28 Sh. Ct. Rep. 308; but see *John Haig & Co. Ltd. v. Boswell Preston*, 1915, S.C. 339; 52 S.L.R. 226; 1915, 1 S.L.T. 26.

As to fees chargeable by skilled witnesses, see *Brown v. Fife Coal Co. Ltd.*, 1915, 31 Sh. Ct. Rep. 108; *White v. Avery Ltd.*, 1915, 31 Sh. Ct. Rep. 344; *Cunningham v. Glasgow Corporation*, 1916, 32 Sh. Ct. Rep. 181; *Chrystal v. Singer & Co.*, 1917, 33 Sh. Ct. Rep. 25.

A motion for a certificate of additional charges for skilled witnesses ought properly to be made at the close of the proof,

Davidson v. Scott, 1915, S.C. 1120; 52 S.L.R. 804; 1915, 2 S.L.T. 113.

8. Only such expenses are allowed on taxation as are necessary for conducting the litigation "in a proper manner with due regard to economy." C.A.S., M, ii., 10.

As to allowing fees in special circumstances, beyond the fees specified in the table, see *Govan v. M'Killop*, *supra*.

Expenses of sisting a trustee or representatives of deceased were held as part of judicial expenses, *Barron v. Black*, 1908, 16 S.L.T. 180.

Precognitions allowed, where an order for proof was recalled to allow amendment and case sent back for proof, *Mica Insulator Co. Ltd. v. Bruce Peebles & Co. Ltd.*, 1907, 15 S.L.T. 50; also where appeal taken against allowance of proof and issues ordered, *M'Clymont v. Glasgow Corpn.*, 1913, S.C. 870; 50 S.L.R. 549; 1913, 1 S.L.T. 371. See also *Walker v. Barclay*, 1909, 2 S.L.T. 500; *Boyle v. Olsen*, 1913, S.C. 112; 50 S.L.R. 67; 1913, 2 S.L.T. 347 (expenses of precognition allowed where tender lodged after intimation that proof to be allowed).

The expense of witnesses not examined is to be disallowed unless sanctioned by the Sheriff on motion made at the close of the proof. C.A.S., M, ii., Table of Fees, x.

9. A party found entitled to expenses generally is not upon taxation of his account allowed the expense of "any particular part of the litigation" in which he has proved unsuccessful, or of any part of the expense occasioned through his own fault. C.A.S., M, ii. 11.

Modification by the Court does not affect this rule, *Arthur v. Lindsay*, 1895, 22 R. 904; 32 S.L.R. 680; 3 S.L.T. 82. See *Ralston v. Caledonian Railway Co.*, 1878, 5 R. 671; 15 S.L.R. 372; *Dick & Stevenson v. Mackay*, 1880, 7 R. 778; 17 S.L.R. 565 (expense of unnecessary proof modified); *Craig v. Craig*, 1906, 44 S.L.R. 100; 14 S.L.T. 469 (rule applied where general finding of expenses made, although Lord Ordinary intended his finding to carry expenses of parts of case on which party unsuccessful).

The rule does not apply where any part of the expenses are declared to be expenses in the cause, *Glasgow and S.-W. Railway Co. v. Ayr Mags.*, 1911, S.C. 298; 48 S.L.R. 211; 1911, 1 S.L.T. 176.

A general finding of expenses carries the expense of discussion of preliminary pleas, such not being a separate part of the case, *Earl of Lauderdale v. Wedderburn*, 1911, S.C. 4; 48 S.L.R. 3; 1910, 2 S.L.T. 209.

Objections to the Taxation may be taken by either party, by written note lodged within two days after the lodging of the Auditor's report. Act of 1907, rule 100.

This provision may be highly inconvenient in practice, owing to the time of lodging being under the control of the party who holds the account, while there is no provision for notice being given to the opposite party.

The note of objections should state specifically the items objected to, and what the objector wishes to be substituted, *Crossan v. Caledonian Railway Co.*, 1902, 5 F. 187; 40 S.L.R. 167; 10 S.L.T. 562.

The Sheriff disposes of the objections in a summary manner, with or without answers. Rule 100.

A decree for expenses includes a decree for the expense of extract. Rule 98.

Decree for expenses may be extracted after the lapse of seven days, unless otherwise directed. Rule 98.

A party paying expenses before decree is entitled to deduction of the items not incurred, *Leith Mags. v. Gibb*, 1882, 19 S.L.R. 399; *Maitland*, 1882, 20 S.L.R. 35; *Bannatyne v. M'Lean*, 1884, 11 R. 681; 21 S.L.R. 479. A party obtaining decree with expenses is entitled notwithstanding implement to obtain an extract at the cost of the party found liable, at all events if the decree is not merely one for payment, *Rutherglen P. C. v. Glenbucket P. C.*, 1896, 33 S.L.R. 368; 3 S.L.T. 251; *Orr v. Smith*, 1891, 28 S.L.R. 539; *Williams v. Carmichael*, 1874, 11 S.L.R. 530 (pursuer not entitled to delivery of extract decree of absolver on paying expenses to agent-disburser).

Interest runs on expenses from the date of the decree therefor, *Wallace v. Henderson*, 1876, 4 R. 264; 14 S.L.R. 181.

An interlocutor granting decree for the taxed amount of the expenses is not appealable, *Maxwell's Trs. v. Kirkintilloch P. C.*, 1883, 11 R. 1; 21 S.L.R. 1. But if the interlocutor disposes of objections to the Auditor's report, appeal is competent, *Innes v. Macdonald*, 1899, 1 F. 380; 36 S.L.R. 284; 6 S.L.T. 273; *Craig v. Craig*, 1906, 44 S.L.R. 100; 14 S.L.T. 469.

IV. RIGHTS OF AGENT IN REGARD TO EXPENSES

1. Action by Law Agent for Business Account.—The only peculiarity in regard to an action by a law agent

against a client for payment of an account for professional services is that the account has to be taxed before the Sheriff gives decree therefor, unless of consent.

The summary method of having a law agent's account, when liability is not disputed, taxed and decree granted therefor in the process, provided by the A.S. of 1839, sec. 110, has not been re-enacted in the Act of 1907. The Act of Sederunt has fallen with the repeal of the Act of 1838.

2. Agent's right to be Sisted.—An agent is not entitled to proceed with an action against the instructions of his client with a view to recovery of his expenses, either in name of his client or by being sisted as a party.

Elliot v. Elliot, 1893, 1 S.L.T. 261; *Wales v. Wales*, 1901, 9 S.L.T. 371; *Riddle v. Riddle*, 1904, 12 S.L.T. 361.

Exceptions to this rule are—

(a) Where there has been an interlocutor practically inferring that expenses will be granted, *Welsh v. Cousins*, 1898, 35 S.L.R. 656; 5 S.L.T. 366.

(b) Where the parties to a cause have entered into an agreement to defeat the agent's right to payment of his expenses, *Crawford v. Smith*, 1900, 8 S.L.T. 249.

(c) Where parties effect a compromise after a decree for expenses has been granted, *Ammon v. Tod*, 1912, S.C. 306; 49 S.L.R. 244; 1912, 1 S.L.T. 118.

The executor of a deceased litigant having no interest in prosecuting the action, was held not entitled to continue it in order to recover expenses, *Martin's Exrs. v. M'Ghee*, 1914, S.C. 628; 51 S.L.R. 499; 1914, 1 S.L.T. 365.

3. Agent's right to Charging Order under the Law Agents and Notaries Public (Scotland) Act, 1891, 54 & 55 Vict. c. 30.

The provision of this Act applies to "every case in which a law agent shall be employed to pursue or defend any action or proceeding in any Court." The Court or judge before whom the action or proceeding "has been heard" or is "depending" may declare the law agent entitled to a charge for the amount of his taxed expenses upon and against, and a right to payment out of, the pro-

perty recovered or preserved for the client by such proceeding. Sec. 6.

A charging order has been granted in the following cases:—

Stenhouse v. Stenhouse's Trs., 1903, 10 S.L.T. 684; *Paton v. Paton's Trs.*, 1905, 13 S.L.T. 96 (extra-judicial expenses); *Automobile, etc., Syndicate, Ltd. v. Caledonian Railway Co.*, 1909, 1 S.L.T. 499; *Philip v. Willson*, 1911, S.C. 1203; 48 S.L.R. 947; 1911, 2 S.L.T. 158 (order granted after client gone into liquidation, and where fund in England).

The Act was held to apply to a local agent's account in a liquidation where expenses payable between agent and client, *Bannatyne & Co.*, 1907, S.C. 705; 44 S.L.R. 553; 14 S.L.T. 949.

It was refused—

(a) Against the capital of estate recovered by agent of life-renter, *Carruthers' Trs. v. Finlay & Wilson*, 1897, 24 R. 363; 34 S.L.R. 254; 4 S.L.T. 193.

(b) Where the estate had passed into the hands of a third party, though after decree, *Tait & Co. v. Wallace*, 1894, 2 S.L.T. 261.

(c) Where the estate was not "preserved" within the meaning of the statute, *Hutchison's Trs. v. Hutchison*, 1902, 40 S.L.R. 200; 10 S.L.T. 562. Cf. *Smart & Co. v. Stewart*, 1911, 49 S.L.R. 66; 1911, 2 S.L.T. 340.

As to extent of charging order, see *O'Keefe v. Grieve's Trs.*, 1917, 1 S.L.T. 305.

4. Agent's right to Decree for Expenses.—The agent who has conducted the cause may obtain a decree for expenses in his own name. Rule 99. The result of this decree is to give him a claim for expenses not defeasible by any set-off the debtor may have against his client.

Notwithstanding the views expressed in *Rorie v. Macpherson*, 1910, 26 Sh. Ct. Rep. 232, intimation of motion for decree in name of the agent ought to be given.

But where there are cross accounts of expenses, arising out of the same matter, the principle of compensation will apply, and decree will not be granted.

Failure to state a plea of compensation before decree is granted does not bar the question being subsequently raised, *Fowler v. Brown*, 1916, S.C. 597; 53 S.L.R. 416; 1916, 1 S.L.T. 280.

Decree in name of agent-disburser was refused—

(a) Where the pursuer in an action of filiation obtained decree with expenses, while at the same time she was found liable in the

expenses of a concurrent action for damages for seduction, *Oliver v. Wilkie*, 1901, 4 F. 362; 39 S.L.R. 251; 9 S.L.T. 299. See also *Masco Cabinet Co. Ltd. v. Martin*, 1912, S.C. 896; 49 S.L.R. 597; 1912, 1 S.L.T. 349. But a possible counter-claim for expenses arising subsequently in the same action is not a ground for refusing decree in the agent's name, *Nelson & Co. v. Glasgow Corp'n.*, 1908, S.C. 879; 45 S.L.R. 710; 16 S.L.T. 74.

(b) Where in one case there were findings of expenses to one party down to a certain date and thereafter to the other party, *Dixon v. Murray*, 1894, 1 S.L.T. 600; *Macgillivray v. Mackintosh*, 1891, 19 R. 103; 29 S.L.R. 103. It would be different if in one case there is an award of expenses and decree given in name of the agent disburser; a later award would not be set against it, *Blasquez v. Scott*, 1893, 1 S.L.T. 357.

(c) Where a party already held a decree for expenses in a litigation as to the same subject-matter, *Portobello Pier Co. v. Clift*, 1877, 4 R. 685; 14 S.L.R. 435; *Lochgelly Iron, etc., Co. v. Sinclair*, 1907, S.C. 442; 44 S.L.R. 364; 14 S.L.T. 783. See also *Grieve's Trs. v. Grieve*, 1907, S.C. 963; 44 S.L.R. 737; 15 S.L.T. 91 (payment in a multiplepointing made to beneficiary, and judgment reversed by House of Lords; agent refused decree so as to prevent set-off of expenses).

(d) On account of the conduct of the litigant, *Bloe v. Bloe*, 1882, 9 R. 894; 19 S.L.R. 646.

There is no compensation, and the agent may get decree in his own name in the following cases:—

(a) Where there are two actions but not relating to the same subject-matter, *Stuart v. Moss*, 1886, 13 R. 572; 23 S.L.R. 532; *Strain v. Strain*, 1890, 17 R. 566; 27 S.L.R. 586; *Paterson v. Wilson*, 1883, 11 R. 358; 21 S.L.R. 272.

(b) Where a party holding a decree thereafter raises a second action relating to the same subject-matter and is found liable in expenses, *Paolo v. Parias*, 1897, 24 R. 1030; 34 S.L.R. 780; 5 S.L.T. 93; *Bruce v. Adamson*, 1900, 8 S.L.T. 17; *Levy v. Blasquez*, 1908, 16 S.L.T. 6; *Fine v. Edinburgh Life Assurance Co.*, 1909, 46 S.L.R. 480; 1909, 1 S.L.T. 233. If decree is taken in name of the agent disburser, question of compensation cannot be raised thereafter in the process, *Prentice v. Shearer*, 1909, 1 S.L.T. 58.

Rennie v. James, 1908, S.C. 681; 45 S.L.R. 528; 15 S.L.T. 945 (suspension on ground that agent was not certificated, refused).

Gordon v. Smith, 1908, 45 S.L.R. 513; 15 S.L.T. 1031 (decree for expenses of appeal granted to Sheriff Court agent of consent of Edinburgh agent).

CHAPTER XVIII.

PROCEDURE IN SMALL DEBT CAUSES

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THE procedure in Small Debt causes is regulated by the Small Debt Acts. This term is defined by the Act of 1907 as meaning and including "The Small Debt (Scotland) Acts, 1837 to 1889, and Acts explaining or amending the same," Act of 1907, sec. 3 (*j*). These Acts were defined as being the Small Debt Act, 1837, 1 Vict. c. 41; the Sheriff Courts Act, 1853, 16 & 17 Vict. c. 80; and the Small Debt Amendment Act, 1889, 52 & 53 Vict. c. 26; Act of 1889, sec. 1. The definition in the Act of 1907 does not take into account the repeal of the Act of 1853. The Citation Amendment Act of 1871, 34 & 35 Vict. c. 42, applies solely to Small Debt causes, but is not referred to in the foregoing definition.

I. ACTIONS COMPETENT IN SMALL DEBT COURT

The proceedings competent in this Court are—
Under the Act of 1837—

1. Petitory Actions;
2. Actions of Furthcoming;

3. Actions of Multiplepoinding;
 4. Sequestration for Rent;
- and under the Act of 1889—
5. Actions for delivery of corporeal moveables.

Certain proceedings, while not "Small Debt actions," are carried out in the same way as actions under the Act of 1837. Such are (1) Proceedings under the Employers and Workmen Act, 1875. These proceedings are now rarely seen. (2) Summary removings, see p. 196.

Value of Cause.—In all cases the sum sued for or the value of the moveables must not exceed £20.

Act of 1837, sec. 2; Act of 1889, sec. 2; Act of 1907, sec. 42.

The alteration effected by the Act of 1913 on the definition of a summary cause by removing the limit of £20 and excluding actions "brought and conducted in the Small Debt Court" has obviated any dubiety as to the competency of taking a cause not exceeding £20 otherwise than in the Small Debt Court. It has also removed the anomaly of taking a cause not exceeding £20 in the ordinary Court. Such a case can now be taken either in the Small Debt Court or in the ordinary Court as a summary cause. In any case, however, the pursuer is only to be entitled to Small Debt expenses unless the Sheriff sees reason to order otherwise. C.A.S., M, ii., 2 (4).

A pursuer is held to have abandoned any part of his debt exceeding the above limit. Act of 1837, sec. 2.

Separate actions may, however, be raised on distinct and separate claims, *Fraser v. Ferguson*, 1870, 42 J. 396; 1 Coup. 432. See also *John, Ltd. v. Chalmers & Son*, 1910, 26 Sh. Ct. Rep. 34; *Baird & Stevenson, Ltd. v. O'Hara Brothers*, 1911, 27 Sh. Ct. Rep. 365; *St. George's Co-operative Society v. Murray*, 1918, 34 Sh. Ct. Rep. 229; *Caledonian Railway Co. v. Findlater*, 1915, 31 Sh. Ct. Rep. 25.

Where an account exceeds but is restricted to £20, items disallowed in it are to be deducted from the total of the account, and not from the sum sued for, *Dalglish & Kerr v. Anderson*, 1883, 20 S.L.R. 412.

Extent of Jurisdiction.—The jurisdiction of the Sheriff territorially is the same as in other proceedings in the Sheriff Court. Act of 1907, secs. 45 and 4.

As regards the subject-matter of the action, any question that can be presented in the form of a claim for a sum of

money not exceeding £20, and not involving a decision on a question of status, may be competently entertained in the Small Debt Court.

Pollock v. Fulton, 1906, 22 Sh. Ct. Rep. 161.

Claims for aliment are expressly mentioned as falling under the Small Debt jurisdiction. Act of 1907, secs. 45 and 5 (2).

Philip v. Forfar Building Co., 1868, 1 Coup. 87.

An action is not necessarily incompetent in the Small Debt Court though it raises question of continuing liability, *Nixon v. Caldwell*, 1876, 3 R. (J.C.) 31; 13 S.L.R. 483; but see *Strang v. Strang*, 1882, 19 S.L.R. 724 (claim by wife involving question of status held incompetent).

Where an important question is raised it would appear not to be incompetent for the Sheriff to sist the case that the decision of the Supreme Court might be obtained, *Provincial Homes Co. v. Leven*, 1904, 6 F. 62; 41 S.L.R. 863; 12 S.L.T. 274.

It is thought that the Sheriff's powers of awarding interim aliment in the Small Debt Court are not restricted by the extension of his jurisdiction in regard to separation.

As regards the defender, the various grounds of jurisdiction set forth in the Act of 1907, sec. 6, are, with the exception of subsection (*e*), which relates to an action of interdict, applicable to the Small Debt Court. Act of 1907, sec. 45. Section 3 of the Act of 1889 relating to jurisdiction over defenders resident in different counties is not repealed, and it is not clear whether it is to be held as superseded by sec. 6 (*a*) of the Act of 1907, as amended by Act of 1913.

The provisions of the 1907 Act as to the Poor's Roll apply to Small Debt causes. Act of 1907, secs. 45 and 51.

Remit from Ordinary Court to Small Debt Court.—

Any action may, by consent of parties, be disposed of in the manner provided by the Small Debt Acts. Act of 1907, rule 61. To effect this, a minute signed by the parties is lodged in process, and the Sheriff remits the cause to his Small Debt Court Roll, whereupon the provisions of the Small Debt Acts become applicable. Rule 61.

II. PROCEDURE IN SMALL DEBT ACTION

1. Raising Action.

(1) **Summons.**—The summons is in the form of Schedule A, Act of 1837, and contains warrant to cite the defender and witnesses, and to arrest on the dependence. It is signed by the Sheriff-Clerk.

The origin of the debt or ground of action must be shortly set forth, either in the summons or in a separate paper or account to which the summons must make reference. An account founded on should be referred to by its amount and last date. Act of 1837, sec. 3.

Gray v. M'Kenzie, 1866, 5 Irv. 324; *Cox v. Jackson*, 1877, 4 R. 898.

(2) **Citation.**—The defender is cited by a copy of the summons and of the account sued for, if any, being served on him in one of the following ways:—

(a) By an officer, either personally or at the defender's dwelling-place, or, if the defender is a company, at its ordinary place of business. Act of 1837, sec. 3. A witness is not necessary. Citation Amendment (Scotland) Act, 1871, sec. 4.

Where the summons is left by an officer at a place from which the defender has removed, a copy must be sent to his last known address in a registered letter. This is valid service only when the officer is satisfied that the defender is refusing access, or concealing himself, or has removed within forty days, and his address is unknown. Act of 1871, sec. 3. *Bell v. Bowman & Co.*, 1919, 35 Sh. Ct. Rep. 90 (citation by lock-hole at business premises).

(b) By an officer or an enrolled law agent sending a copy in a registered letter. Citation Amendment (Scotland) Act, 1882. See p. 69.

(c) Edictally where necessary. See p. 68.

The diet of appearance is specified in the summons, and is not sooner than the sixth day after citation.

A defender resident within the district of a circuit Small Debt

Court may be cited either to it or to the principal Court, *Stewart v. Macgregor*, 1868, 40 J. 654; 1 Coup. 92. See *Mactavish & Co. v. Cameron*, 1899, 15 Sh. Ct. Rep. 292.

The rules provided by the Act of 1907 as to the following matters are applicable to Small Debt as well as to ordinary actions (Act of 1907, sec. 45), viz. :—

(a) Endorsement is not necessary for service or arrestment on the dependence beyond the county. Act of 1889, sec. 11; Act of 1907, rule 10. See p. 68.

(b) A firm or an individual may sue and be sued under a descriptive name and cited at a place of business. Rule 11. See p. 55.

(c) Service of new may be ordered. Rule 12. See p. 72.

(d) A party appearing cannot state any objection to the regularity of service. Rule 13. See p. 72.

(e) Service may be edictal in the case of unknown tutors and curators, and of parties abroad. Rules 14 and 15. See p. 68.

(f) Power to transfer causes from one sheriffdom to another. Rules 19 and 21. See pp. 4 and 7. Act of 1907, sec. 45. This applies only to cases where the action is brought in the Court of the jurisdiction of one or more defenders, or where a plea of “no jurisdiction” is sustained.

A Small Debt cause does not fall asleep in year and day, *Kean v. Lindsay*, 1852, 25 J. 8.

The enactment of these provisions as regards the Small Debt Court does not exclude ordinary common law rights in judge or parties, e.g. the right to abandon, *Martin v. Caledonian Railway Co.*, 1911, 27 Sh. Ct. Rep. 152.

2. Procedure when Action undefended.

(1) **Decree in Absence.**—If, on the calling of the case in Court, there is no appearance for the defender, the pursuer may obtain decree in absence against him.

If a pursuer or other representative fails to appear, the defender may obtain decree of absolvitor in absence.

Act of 1837, sec. 15. A case may be adjourned on sufficient reason.

The powers of amendment in an ordinary undefended cause are applicable to an undefended Small Debt cause. Act of 1907, sec. 45, rule 26. See p. 76.

(2) **Re-hearing.**—(a) By defender. Where a decree in absence has been obtained, the defender can obtain a warrant sisting execution till the next Court day. The sist can only be obtained either before a charge has been given, or after a charge before implement thereof, and within three months of the date of the charge. To obtain a sist the defender consigns the expenses decerned for, and ten shillings to meet further expenses. Act of 1837, sec. 16. The warrant is served in the same way as a summons, and does not require endorsation for service out of the county. Act of 1837, sec. 16.

Arrestment on a decree would not bar reponing, *Paul v. Macrae*, 1887, 3 Sh. Ct. Rep. 338. An execution of poinding is equivalent to implement, *Sinclair v. Aird & Co. Ltd.*, 1917, 33 Sh. Ct. Rep. 251.

(b) By pursuer. Where a decree of absolvitor has passed in absence of the pursuer, he may obtain the like sist within one calendar month after the decree, on consigning the expenses decerned for, and five shillings to meet further expenses. Act of 1837, sec. 16.

In each case the expenses decerned for are to be paid over out of the consigned fund unless otherwise ordered. Sec. 16.

Re-hearing and sist has been held competent—

(a) After second charge on same decree, *Lochie v. Brown*, 1863, 35 J. 461; 4 Irv. 363.

(b) Although a previous sist had already been granted, *Grange v. M'Kenzie*, 1866, 5 Irv. 324.

It has been held incompetent—

(a) After charge and poinding, *Wyllie v. Lawson*, 1863, 4 Irv. 441; *Gow & Sons v. Thomson*, 1895, 1 Adam, 534; 2 S.L.T. 11.

(b) Where both parties appeared at the first calling, *Worrall &*

Co. v. Macdowall, 1885, 13 R. (J.C.) 4; 23 S.L.R. 5; and *M'Neil v. M'Neil*, 1891, 18 R. (J.C.) 38; 28 S.L.R. 599. But otherwise, if the case has not been entered upon, *Montgomery v. Loughran*, 1891, 18 R. (J.C.) 25; 28 S.L.R. 345; *Oliver v. Simpson*, 1898, 1 F. (J.C.) 12; 36 S.L.R. 62; 6 S.L.T. 198 (defender appeared at first diet but not at proof; re-hearing was held competent); *Ratcliffe v. Farquharson*, 1908, S.C. (J.) 71; 45 S.L.R. 662; 16 S.L.T. 33; *Netherwood v. Scott*, 1907, 24 Sh. Ct. Rep. 39; *Aschengrav v. Hillson & Co.*, 1912, 28 Sh. Ct. Rep. 141.

Appeal is competent against a sist on the same grounds as against a decree, *Gow & Sons v. Thomson*, *supra*. See also *Murray v. Adams*, 1909, 25 Sh. Ct. Rep. 152.

3. Procedure when Action defended.

(1) **Hearing of Cause.**—The summons includes a warrant to cite witnesses (Act of 1837, sec. 3), which is executed in the same way as other citations, but no witness to the citation is required. The service copy of the summons is a warrant for citing the defender's witnesses. The period of notice required for witnesses is not less than forty-eight hours. Act of 1837, sec. 12.

Parties may be heard and evidence led at the diet specified in the summons or at an adjourned diet. No record of the pleadings or the evidence is kept, but the decision is noted in a register of cases kept by the Sheriff-Clerk and signed by the Sheriff.

Parties may appear by themselves personally, by a member of their family, or other person if allowed by the Sheriff, or by an agent. Act of 1837, secs. 14 and 15; Act of 1907, sec. 44. "Agent" is defined in the latter Act, sec. 3 (g).

A notary was allowed to appear, *Milne v. Leslie*, 1888, 15 R. 460; 25 S.L.R. 340.

Commission to take evidence (rules 63 and 70) and remits (rule 60) may be granted as in ordinary actions. Act of 1907, sec. 45.

Diligence may be granted for recovery of documents, *Taylor v. Marshall*, 1919, 35 Sh. Ct. Rep. 176.

The assignees of a pursuer, the representatives of a deceased pursuer, or the trustee of a bankrupt pursuer, and the representatives of a deceased defender, or the trustee of a bankrupt defender, may be sisted by minute endorsed

by the Sheriff on the summons. Act of 1889, sec. 4. This provision, which is not repealed, is covered, and possibly extended, by the provisions of the Act of 1907, rules 79 and 80, as to amendments which apply to Small Debt causes. Act of 1907, sec. 45.

A lost number of process may be replaced by a copy, authenticated as the Sheriff may require. Act of 1907, sec. 45, rule 17.

(2) **Counter Claim.**—Where the defender intends to plead a counter claim, a copy thereof must be served upon the pursuer at least one day before the day of appearance. Act of 1837, sec. 11, Schedule A. The rule as to pleading a counter claim in defences and granting decree therefor in favour of the defender applies to Small Debt causes. Act of 1907, sec. 45, rule 55.

Rule 55 does not supersede the provision of the Act of 1837, sec. 11, as to service of counter claim, *Johnstone v. M'George*, 1908, 24 Sh. Ct. Rep. 84; *Simons & Co. v. Miller*, 1909, 25 Sh. Ct. Rep. 122.

What constitutes a counter claim necessitating formal service, may sometimes be a matter of difficulty, *Taylor v. Ormond & Co.*, 1906, 8 F. (J.) 76; 43 S.L.R. 652; 13 S.L.T. 857; *Cowie v. Rush*, 1866, 5 Irv. 320; *Rolland v. Rolland*, 1907, 44 S.L.R. 770; 15 S.L.T. 141 (pecuniary claim against delivery of pictures); *Bernstein v. Holloway*, 1909, 26 Sh. Ct. Rep. 32; *Grindlay v. Callendar Iron Co. Ltd.*, 1913, 29 Sh. Ct. Rep. 312, and *M'Kellar v. Greenock, etc., Loan Co. Ltd.*, 1918, 34 Sh. Ct. Rep. 93.

(3) **Pleading by Exception.**—It is competent to state objections to any document by way of exception in the Small Debt Court. Act of 1907, sec. 45, rule 50. See p. 22. The rule (51) as to caution or consignment does not apply.

Wilson v. Glasgow Tramway Co., 1878, 5 R. 981; 15 S.L.R. 656. See also *Neil v. M'Nair*, 1901, 3 F. (J.C.) 85; 38 S.L.R. 804; 9 S.L.T. 59; *Craig v. Lorn District Committee of Argyll C. C.*, 1911, 28 Sh. Ct. Rep. 14.

(4) **Remit to Ordinary Court.**—If the Sheriff is of the opinion that the importance of the questions raised warrants

it, he may remit the cause to his Ordinary Court Roll. Act of 1907, sec. 48.

The remit may be at any stage, and either on cause shown or *ex proprio motu*. Act of 1907, sec. 48; *Wigtown Creamery Co. v. Portpatrick District Committee*, 1903, 6 F. (J.C.) 3; 41 S.L.R. 191; 11 S.L.T. 544.

Remit is appropriate where there are conflicting decisions by Sheriffs-Substitute, *Nimmo v. N.B. Railway Co.*, 1905, 21 Sh. Ct. Rep. 19.

In the case of such a remit the cause proceeds in all respects, including appeal, as if raised in the ordinary Court. Act of 1907, sec. 48.

The case would, however, fall under the category of "summary causes." Act of 1907, sec. 3 (i), as amended by Act of 1913. The alteration in the definition meets the views expressed in *Price v. Canadian Pacific Railway Co.*, 1911, S.C. 631; 48 S.L.R. 558; 1911, 1 S.L.T. 311. Appeal to the Court of Session would be competent with leave by virtue of sec. 28 of the Act of 1907 as amended by the Act of 1913, seeing the cause "is being tried as a summary cause."

Appeal to the Justiciary Court would also, it is thought, remain competent notwithstanding the remit to the Ordinary Roll.

Campbell v. Gillies, 1871, 44 J. 3; 2 Coup. 142.

(5) **Judgment.**—The judgment is recorded in the register of causes and contains no findings, but simply states the sum decerned for. It is in the discretion of the Sheriff to allow the sum to be paid by instalments. Act of 1837, sec. 18. Decree may be given for sums to become due for a period not exceeding twelve months. Act of 1889, sec. 9.

Caution for the sum sued for cannot be ordered, *Paterson v. Paterson's Trs.*, 1872, 44 J. 381; 2 Coup. 234.

As to cases in which an instalment decree is appropriate, see *Friedlander & Co. v. Hutton*, 1902, 18 Sh. Ct. Rep. 138.

If a case is taken to avizandum, the judgment may be pronounced on a day appointed though the parties do not appear, or within seven days from the hearing, without parties requiring to attend. Act of 1889, sec. 10; *Paterson & Son v. Robinson*, 1895,

22 R. (J.C.) 45; 32 S.L.R. 627 (judgment issued after the seven days—observations on sec. 10 of Act).

The expenses which can be awarded are limited by statute. Act of 1837, secs. 13 and 32. Agent's fees may be allowed. Act of 1907, sec. 44; *Glyco, etc., Co. v. Allan*, 1907, 23 Sh. Ct. Rep. 145. The agent may obtain decree for expenses in his own name. Act of 1889, sec. 12.

Stewart v. Ollason, 1918, 34 Sh. Ct. Rep. 124 (expenses of agent conducting his own case).

The fees are regulated by the Codifying Act of Sederunt, M, ii., Table of Fees. Appendix, p. 407.

It is thought that the expense of founding jurisdiction in a Small Debt cause by arrestment could not be allowed.

III. DILIGENCE UPON DECREE

1. Extract.—The decree or extract-decree is written either on the summons or separately, and is signed by the Sheriff-Clerk. It implies warrant for execution by poinding and sale and arrestment, and by imprisonment where that is competent. Act of 1889, sec. 13.

2. Charge.—The period of charge is ten free days and a witness is not necessary. Act of 1889, sec. 11. A charge for payment of money may be given by post, in the manner prescribed by the Citation Act of 1882, in cases where the place of executing the charge is more than twelve miles distant from the seat of the Court where the decree was granted. Act of 1907, sec. 49.

The safety or expediency of executing a charge by post in many cases may well be doubted in the absence of further statutory direction than is given by the mere reference to the Citation Act of 1882. It is evident that the application of several of the provisions as to postal citation to a charge on a decree presents difficulties; *e.g.* is the date of posting to be the date of charge as it would be the date of citation? If so, the debtor would not necessarily have the full number of days of charge. The postal charge may apparently be given by an officer only.

A company is charged in the same manner as upon an ordinary decree. Act of 1907, sec. 45, rule 151.

If the defender is personally present when judgment is pro-

nounced, a charge is not necessary, but diligence can proceed after a lapse of ten days. Act of 1837, sec. 13; *Shiell v. Mossman*, 1871, 10 M. 58; 44 J. 46.

The charge expires after a year. Act of 1837, sec. 13.

Any party to a cause may obtain an extract. Act of 1889, sec. 12. A second or further extract may be issued in the form of Schedules B or C of the Act of 1889 to have the same force and effect as the first extract. Act of 1907, sec. 47.

An assignee will obtain warrant to arrest, charge, and point on the decree in the same way as in an ordinary action, Debtors (Scotland) Act, 1838, sec. 12; but the Act does not give warrant to carry out the pouncing by sale.

Inhibition on a Small Debt decree is not competent, *Lamont v. Lorimer*, 1867, 6 M. 84; 40 J. 52.

3. Pounding and Sale.— Upon expiry of the charge, or lapse of ten days where a charge is not necessary, the debtor's effects may be pointed by an officer and two sworn valuers. A list of the effects is left with the party in whose custody they are. The sale is carried out not less than forty-eight hours thereafter, between eleven and three o'clock, and after two hours' notice, at the town cross or most public place. The Sheriff may alter the hour or place of sale. If the goods are not sold, they are delivered to the creditor at the appraised value. If they are sold or delivered, the officer must make a report to the Sheriff-Clerk within eight days of the sale. Act of 1837, sec. 20, Schedule G.

The decree includes warrant to open shut and lockfast places. Act of 1889, sec. 7.

As to breach of pouncing, see Act of 1837, sec. 20, also *Dickson v. Bryan*, 1889, 16 R. 673; 26 S.L.R. 511; *Thomson v. Wood*, 1896, 12 Sh. Ct. Rep. 241; *Perritt v. Bell*, 1896, 12 Sh. Ct. Rep. 327.

4. Arrestment.— Arrestment may be used either on the dependence, warrant for which is included in the summons (Act of 1837, sec. 3), or in execution by virtue of the warrant in the decree.

If the arrestment is not served personally, copy of the schedule has to be sent by registered letter to the arrestee. Act of 1889, sec. 5; Act of 1907, sec. 45, rule 126. An

arrestment falls on the expiry of three months from its date, unless (*a*) renewed by special warrant or order, which has to be intimated to the arrestee, in which case it subsists three months from the date of renewal, (*b*) an action of furthcoming or multiplepoinding is sooner raised. Act of 1837, sec. 6.

Wages cannot be arrested on the dependence of a Small Debt summons, Wages Arrestment (Scotland) Act, 1845, 8 & 9 Vict. c. 39; but otherwise in the case of the expenses of an alimentary decree obtained against him, *Hunter v. Wilson*, 1917, 33 Sh. Ct. Rep. 209.

An arrestment on the dependence of an action used prior to service falls unless the action has been served within twenty days of the arrestment, Act of 1907, sec. 45, rule 127, as amended by Act of 1913.

5. Loosing of Arrestment on Dependence.—The defender may have arrestments used on the dependence loosed in the following ways:—(*a*) by lodging with the Sheriff-Clerk a bond of caution by one or more good and sufficient cautioners to his satisfaction, in form of Schedule C annexed to Act of 1837; or (*b*) by consigning the amount of the debt with 5s. for expenses if the action is below £5, and 10s. if the action is for a higher sum; or (*c*) by producing evidence of his having obtained decree of absolvitor, or paid or consigned the sums decerned for, or sued for, if decree has not been pronounced. In these events the Sheriff-Clerk grants a certificate, which operates as a warrant for loosing the arrestment. Act of 1837, sec. 8.

IV. SPECIAL FORMS OF SMALL DEBT ACTIONS

1. Furthcoming.—An arrestment, whether in security or on decree, requires to be made effectual by an action of furthcoming. The summons is issued in the form of Schedule D annexed to the Act of 1837 (sec. 9), and is raised in the sheriffdom in which the fund is situated, or in that to whose jurisdiction the arrestee is subject. Section

6 (g) and rules 128 and 129 of Act of 1907 apply. Sec. 45.

The arrestee and the common debtor require to be cited to the same Court. The arrestee is cited on the *induciæ* of six days, but if the common debtor is in another county the *induciæ* are not less than twelve days. Act of 1837, sec. 9. The case proceeds as an ordinary action in the Small Debt Court. If effects have been arrested, warrant for their sale will be granted. Act of 1837, sec. 20.

2. Multiplepoinding.—Where two or more claims, by arrestment or otherwise, are made upon a fund not exceeding £20, an action of multiplepoinding may be raised by the holder of the fund, or by a claimant in his name. The summons is in the form of Schedule E annexed to the Act of 1837, sec. 10, and may be brought in the sheriffdom where the fund is situated, or in that to whose jurisdiction the holder of the fund is subject. The provisions of sec. 6 (g) and rules 128 and 129 of the Act of 1907 apply. Sec. 45. All parties interested are called as defenders, and intimation in newspapers or otherwise is ordered where necessary. After service in the usual way, objections to the competency or the amount of the fund are first disposed of. Thereafter, claims are ordered to be lodged in the form of Schedule E. Parties are heard, and the action is proceeded with in ordinary form.

3. Sequestration for Rent.—Where the sum sought does not exceed £20, sequestrations for rent are competent in the Small Debt Court, and may be raised either in security or for payment. Act of 1837, sec. 5; Act of 1907, secs. 42 and 43. The summons of sequestration is in the form of Schedule B annexed to the Act of 1837, and contains warrant to inventory and secure the effects. The officer has the effects appraised by two persons, who may also be witnesses to the sequestration. An inventory of the effects

with appraisement is given to or left for the tenant, and the execution is returned to the clerk of Court within three days. The tenant is cited to appear at a diet not sooner than the sixth day after service.

The tenant may obtain recall of sequestration by paying the rent claimed with expenses, or by consigning the rent, with £2 to cover expenses, in the hands of the clerk of Court. The clerk writes on the summons "payment made" or "consignation made" as the case may be, and, on intimation to the sequestrating creditor, the sequestration is recalled. Act of 1837, sec. 5.

Consignation before the action is raised has no effect, *Alexander v. Campbell's Trs.*, 1903, 5 F. 634; 40 S.L.R. 453; 10 S.L.T. 736.

On hearing the cause in the ordinary way, the Sheriff, if the rent is due, grants warrant of sale of effects on the premises or at another specified place; but if the sequestration is in security only, the decree will not be granted until the term of payment has expired without payment of the rent having been made. A sale of sequestrated effects is carried through in the same manner as a sale of poinded goods. Act of 1837, sec. 20.

Thereafter a warrant to eject and re-let may be obtained.

Warrant to carry back effects may be granted, but only on special application and on cause shown. See cases on p. 185.

Where the statutory requirements are complied with, the Sheriff must grant expenses, *Renfrew v. Hall*, 1901, 4 F. (J.C.) 27; 39 S.L.R. 280; *Stalker v. Somerville*, 1901, 4 F. (J.C.) 31; 39 S.L.R. 282. If decree for rent be given, warrant for sale of sequestrated effects must also be given, *Clark v. Lowe*, 1900, 2 F. (J.C.) 49; 37 S.L.R. 752; 8 S.L.T. 55.

The sequestration must be registered with the Sheriff-Clerk, 30 & 31 Vict. c. 42, secs. 2 and 7.

4. Ejection.—A warrant of ejection may be obtained in the Small Debt Court in cases in which decree for rent has been obtained in that Court.

Where a sale has been carried out under warrant, or a warrant of sale has been granted, the pursuer may obtain

warrant to eject and re-let on lodging a report of an officer that the premises have been dispenished, and giving forty-eight hours' notice of the motion to the debtor. Act of 1889, sec. 6.

5. Summary Removing.—An application for summary removing in the case of houses or other heritable subjects let for less than a year is to be conducted and disposed of in the summary manner in which proceedings are conducted under the Small Debt Acts. Act of 1907, sec. 38, rules 115 to 122.

The rent of the subjects is immaterial. This action is hardly properly described as one of the Small Debt causes, being only assimilated in procedure with causes under the Act of 1837.

Summary removings are dealt with on p. 196.

6. Action for Delivery of Moveables.—An action for delivery of corporeal moveables not exceeding in value the sum of £20 is competent under the Act of 1889, sec. 2. Act of 1907, sec. 42.

The value of articles must be proved to the satisfaction of the Sheriff, and a list of them is annexed to the summons. Act of 1889, sec. 2. If delivery is impossible, or if the value be alternatively asked, decree may be granted for the value.

The Sheriff may determine question of ownership and not merely regulate possession, *Houston v. Milroy*, 1903, 10 S.L.T. 229; *Edwards v. Corrance*, 1903, 19 Sh. Ct. Rep. 219.

Action for delivery of a writ has been held competent, *Baird v. Refuge Assurance Co.*, 1890, 6 Sh. Ct. Rep. 187.

Imprisonment in respect of failure to deliver may be effected under the warrant for execution contained in the decree, without further procedure than a charge. Act of 1907, sec. 46; *Ronald v. Sinclair*, 1902, 18 Sh. Ct. Rep. 164 (second action for value in respect of failure to deliver held incompetent).

Jay v. Paton, 1907, 23 Sh. Ct. Rep. 329; *Stewart v. Macdougall*, 1907, 45 S.L.R. 244; 15 S.L.T. 662.

A defence to an action of delivery of right of retention for

payment should be stated by way of counter-claim, *Rolland v. Rolland*, 1907, 44 S.L.R. 770; 15 S.L.T. 141; *Bernstein v. Holloway*, 1909, 26 Sh. Ct. Rep. 32.

V. APPEALS AGAINST SMALL DEBT DECREE

1. Competency.—No review either on law or on fact of any decision pronounced in the Small Debt Court is competent.

Appeal is competent to the High Court of Justiciary, but only when founded upon one or other of the following grounds:—

Act of 1837, secs. 30 and 31.

(1) "Corruption or malice and oppression on the part of the Sheriff." (2) "Such deviations in point of form from the statutory enactments as the Court shall think took place wilfully, or have prevented substantial justice from having been done." (3) "Incompetency, including defect of jurisdiction of the Sheriff."

See observations on the above sections in *Robson v. Menzies*, 1913, S.C. (J.) 90; 50 S.L.R. 802; 1913, 2 S.L.T. 90.

(1) "Corruption or malice" might be held to apply to grossly unjustifiable procedure.

Philip v. Forfar Building Co., 1868, 41 J. 1; 1 Coup. 87.

As to "oppression" see *Henderson & Sons v. National Telephone Co. Ltd.*, 1909, S.C. (J.) 46; 46 S.L.R. 650; 1909, 1 S.L.T. 397 (no ground of liability disclosed).

(2) The phrase "Deviations in point of form" includes such irregularities in procedure as might be calculated to result in injustice to either of the parties.

For example:—

(a) Where account sued on was for goods sold, and case tried was question of damages, *Glasgow and S.-W. Railway Co. v. Wilson*, 1855, 2 Irv. 162.

(b) Giving decree for price of goods, when damages sued for, *Singer Co. v. Beale & Co.*, 1905, 8 F. (J.C.) 29; 43 S.L.R. 58; 13 S.L.T. 492. See also *Mair's Trs. v. Miller*, 1908, S.C. (J.) 74; 45 S.L.R. 647; 16 S.L.T. 35.

(c) Decree issued by clerk on report which had not been seen by the Sheriff, *Guthrie v. M'William*, 1856, 2 Irv. 476.

(d) Where proof allowed to contradict valuation roll, *M'Lachlan v. Tenant*, 1871, 43 J. 390; 2 Coup. 45.

(e) Where account was prescribed, and Sheriff refused to allow oath of defender, *Murray v. Mackenzie*, 1869, 41 J. 394; 1 Coup. 247; and *Gunn v. Taylor*, 1873, 2 Coup. 491.

(f) Where the Sheriff had not applied his mind to an essential point in the case, *Maxwell v. Bell*, 1886, 24 S.L.R. 12 (document founded on not produced).

(g) Where the Sheriff refused to allow competent and necessary evidence, *Bryce v. Spence*, 1885, 12 R. (J.C.) 43; 22 S.L.R. 849; *Gordon v. Mulholland*, 1891, 18 R. (J.C.) 18; 28 S.L.R. 333; *Sinclair Brothers v. Reid*, 1894, 22 R. (J.C.) 12; 32 S.L.R. 69; 2 S.L.T. 328; *Renfrew v. Hall*, 1901, 4 F. (J.C.) 27; 39 S.L.R. 280; *Cowie v. Paterson*, 1904, 7 F. (J.C.) 68; 42 S.L.R. 175; *Cowe v. M'Dougall*, 1908, 46 S.L.R. 94; 16 S.L.T. 478; but if the admission of proof is a question for the Sheriff to decide, there will be no appeal, as in *Beattie v. Gemmell*, 1862, 24 D. 431; 34 J. 213; *Buchanan v. Glasgow Comrs.*, 1862, 4 Irv. 225; *Nisbet v. Cameron*, 1873, 10 S.L.R. 458; *Brown v. Edinburgh House Property Co.*, 1902, 40 S.L.R. 28; 10 S.L.T. 311; *Hare v. M'Nicol*, 1871, 43 J. 389; 2 Coup. 40; *Robson v. Menzies*, *supra*, p. 286.

(h) Where after two actions had been successively dismissed a third raised on the same ground was dismissed without hearing, *Gow & Son v. M'Ewan*, 1897, 34 S.L.R. 421.

(i) Where the Sheriff made a remit instead of allowing a proof, *Carmichael v. Macintyre*, 1904, 6 F. (J.C.) 48; 41 S.L.R. 853; 12 S.L.T. 285; *Donald v. Paterson*, 1904, 42 S.L.R. 175.

(j) Want of detail or specification of claim was held not a ground of review in *Aitken v. Learmonth*, 1855, 2 Irv. 156; *Mowat v. Martin*, 1856, 2 Irv. 435; *Grange v. Mackenzie*, 1866, 5 Irv. 324; *Birrell v. Buchanan*, 1871, 43 J. 388; 2 Coup. 43.

(3) Questions of "incompetency" and defect of jurisdiction.

For example :—

(a) Where question of status raised, *Strang v. Strang*, 1882, 4 Coup. 563.

(b) Action against trustee in a sequestration instead of lodging claim, *Dickie's Trs. v. White*, 1871, 44 J. 1.

(c) Where defender not subject to the jurisdiction, *Russell v. Murray*, 1892, 19 R. (J.C.) 61; 29 S.L.R. 611; *Roberts v. Provincial Homes Co.*, 1907, S.C. (J.) 7; 44 S.L.R. 76; 14 S.L.T. 440; *Burrell v. Foster*, 1868, 1 Coup. 103; but, on the other hand, the question of competency may be one for the Sheriff's decision, in

which case there is no appeal; *e.g.* where Sheriff held his jurisdiction was not excluded by arbitration clause, *Wilson v. Glasgow Tramway Co.*, 1878, 5 R. 981; 15 S.L.R. 656; see also *Allison v. Balmain*, 1882, 10 R. 12; 20 S.L.R. 24; *Provincial Homes Co. v. Leven*, 1904, 6 F. (J.C.) 62; 41 S.L.R. 863; 12 S.L.T. 274; also where Sheriff decided as to whether case competent in view of statutory right of appeal, *Crieff Mags. v. Young*, 1906, 8 F. (J.C.) 48; 43 S.L.R. 385; 13 S.L.T. 839.

(d) Where in an action of multipoleinding the common debtor had not been called as a party, *Britannic Assurance Co. Ltd. v. James Henderson, Ltd.*, 1912, S.C. (J.) 31; 49 S.L.R. 554; 1912, 1 S.L.T. 354; 27 Sh. Ct. Rep. 249.

No error or mistake in arriving at judgment is a competent ground of appeal. Thus the following grounds were held insufficient, viz. :—

(a) Failure of Sheriff to notice terms of local Act, *Mossan v. Brash*, 1887, 45 J. 5; 2 Coup. 325.

(b) That person was held a pauper though not on the roll, *Paterson v. Mackay*, 1872, 45 J. 5; 2 Coup. 327.

(c) That defender was not properly cited, *Rennie v. N.B. Railway Co.*, 1874, 1 R. (J.C.) 22.

(d) That action was dismissed as premature, *Ferguson v. Mackie*, 1878, 4 Coup. 5; 15 S.L.R. 348.

(e) Where question on merits only raised, *Scott v. Macdonald*, 1885, 23 S.L.R. 273.

(f) Where the question of competency is one for the Sheriff to decide, *Finlay v. Crabb*, 1886, 13 R. (J.C.) 53; 23 S.L.R. 635; *Ferguson v. Mackie*, 1878, 4 Coup. 5.

(g) Manifest error of Sheriff, *Portpatrick, etc., Committee v. Sprott*, 1898, 25 R. (J.C.) 71; 35 S.L.R. 748; *Strathmore Auction Co. v. Millar*, 1906, 8 F. (J.C.) 71; 43 S.L.R. 866; 14 S.L.T. 301.

(h) A claim disclosing no liability, but on which proof had been allowed, *Inverness C. C. v. Morrison*, 1910, S.C. (J.) 80; 47 S.L.R. 679; 1910, 2 S.L.T. 9.

2. Procedure on Appeal.—The appellant, either in open Court at the time of decree or within ten days thereafter, lodges a minute of appeal with the Sheriff-Clerk, and serves a copy on the respondent or his agent in the case, the *induciæ* being fifteen days.

A form of appeal is given on p. 501.

Christie v. Gauld, 1872, 2 Coup. 560. The Sheriff should not

be called as a party, *Paterson v. Moncrieff*, 1895, 32 S.L.R. 627.

Productions in the case and the names of witnesses examined have to be marked by the Sheriff if they are to be referred to in the appeal.

At the time of lodging the appeal, the appellant has to lodge bond with cautioner to abide the judgment and pay costs. The appeal is taken to the next sitting of the High Court of Justiciary at Edinburgh, or on circuit as the case may be.

Heritable Jurisdiction Act, 1746, 20 Geo. II. c. 43, secs. 34 to 36; Act of 1837, sec. 31; A.S., 1839, secs. 132, 133 (now fallen); *Sinclair v. Hollis*, 1881, 9 R. (J.C.) 1; 19 S.L.R. 71; *Mackenzie v. Macphee*, 1888, 16 R. (J.C.) 43; 26 S.L.R. 283. The Circuit or High Court may remit to the Sheriff, with instructions, or decide the case as it may think proper, *Glass v. Laughlin*, 1876, 4 R. (J.C.) 108; 14 S.L.R. 64; *Murray v. Russell*, 1892, 19 R. (J.C.) 61; 29 S.L.R. 611; *Spence v. Bryce*, 1885, 12 R. (J.C.) 43; 22 S.L.R. 849; *Maxwell v. Bell*, 1886, 24 S.L.R. 12; or may remit to the Court of Session, *Burrell v. Foster*, 1868, 1 Coup. 103; but this latter course is not seen in recent practice.

The Court may modify expenses, or allow them as taxed, *Dalglish & Kerr v. Anderson*, 1882, 5 Coup. 221.

VI. REVIEW BY COURT OF SESSION

The Act of 1837 provides that no decree is to be subject to reduction, advocacy, suspension or appeal, or any form of review other than that provided by the Act and above described, either on account of omission, irregularity, or informality in citation or proceedings, or on the merits, or on any ground or reason whatever. Sec. 30. Notwithstanding this "Finality Clause," it is in certain cases competent to have the proceeding reviewed by the Court of Session by bringing a suspension or reduction.

The decisions under a similar finality clause of the Debts Recovery Act, 1867, repealed by the Act of 1907, are still in point.

1. The finality clause does not bar reduction on the ground of essential illegality in procedure.

This was held where a summons was signed by a Sheriff-Clerk

who was pursuer, *Smith v. Manson*, 1871, 9 M. 492; 43 J. 261; and who acted as agent for one of the parties, *Gray v. Hardie*, 1888, 1 White, 561; also where summons served on the wrong person, *Brown v. Rodger*, 1884, 12 R. 340; 22 S.L.R. 225.

2. The finality clause does not apply to any proceedings after decree has been obtained.

The following irregularities were held not protected :—

(a) Where charge had not been given before imprisonment, *Shiel v. Mossman*, 1871, 10 M. 58.

(b) Where extract was not conform to decree, *Murchie v. Fairbairn*, 1863, 1 M. 800; 35 J. 493.

(c) Where debtor after his discharge in bankruptcy was charged on the decree, *Samuel v. Mackenzie*, 1876, 4 R. 187; 14 S.L.R. 130; but see *Beveridge v. Macfarlane*, 1906, 14 S.L.T. 169.

(d) Illegal warrant to carry back effects obtained on *ex parte* statement, *Jack v. Black*, 1911, S.C. 691; 48 S.L.R. 331; 1911, 1 S.L.T. 124.

3. The finality clause bars all proceedings (except the appeal before referred to) in challenge of a decree, and of all the previous procedure in the case.

The following actions were held incompetent :—

(a) Reduction on ground of irregularities in citation, *Lennon v. Tully*, 1879, 6 R. 1253; 16 S.L.R. 740; and in taking proof, *Robertson v. Pringle*, 1887, 14 R. 474; 24 S.L.R. 335.

(b) Claim for damages in respect of irregularities in citation and decree, *Maclean v. Mackenzie*, 1895, 3 S.L.T. 142.

(c) Claim for damages in respect of breaking open lockfast places without warrant, *Scott v. Young*, 1897, 4 S.L.T. 324.

(d) Suspension on ground that sum decerned for was paid before decree, *Curdie v. Hay*, 1902, 10 S.L.T. 435.

(e) Interdict against pointing on ground of error in name of defender, *Spalding v. Valentine*, 1883, 10 R. 1092; 20 S.L.R. 724; *Cruickshank v. Gow*, 1888, 15 R. 326; 25 S.L.R. 292.

(f) Reduction on ground of admitted error in sum decerned for, *Wilson v. Scott*, 1890, 18 R. 233; 28 S.L.R. 127. See also *Tait & Crichton v. Anderson*, 1905, 12 S.L.T. 825.

(g) Actions for damages founded on irregularities prior to decree, or taking decree wrongfully, *Brown v. Halley*, 1895, 3 S.L.T. 22; *Gray v. Smart*, 1892, 19 R. 692; 29 S.L.R. 589; *Jackson v. Lillie*, 1902, 10 S.L.T. 448; *Reid v. Gow*, 1903, 10 S.L.T. 606; *Pollock v. Bremner*, 1898, 25 R. 1051; 35 S.L.R. 821; 6 S.L.T. 72 (sequestration for rent). But see *M'Donald v. Grant*, 1903, 11 S.L.T. 575.

(h) Suspension of charge on decree in absence on ground of objection to citation, *Christie v. Hoseason*, 1898, 6 S.L.T. 123; *Christie Brothers v. Remington Co.*, 1912, 1 S.L.T. 123.

(i) Question of no jurisdiction, *Crawford v. Copland & Lye*, 1901, 9 S.L.T. 76 (where re-hearing not taken, suspension incompetent).

(j) Reduction on ground that decree *ex facie in foro* was truly in absence, *Riach v. Wallace*, 1899, 2 F. 149; 37 S.L.R. 104; 7 S.L.T. 216; *Gray v. M'Intosh*, 1906, 14 S.L.T. 403.

(k) Suspension of charge on a bill for the contents of which decree had been granted, *Clark v. Davidson*, 1893, 1 S.L.T. 141.

As to bearing of finality clause upon question of appeal in statutory case tried under the Small Debt procedure, see *Linton v. Glasgow Friendly Society*, 1895, 23 R. 51; 33 S.L.R. 42; 3 S.L.T. 122 (Friendly Societies Act, 1875).

The finality clause does not apply so as to protect illegal diligence on a decree which has been opened by a re-hearing under sec. 16, *Clark v. Beattie*, 1909, S.C. 299; 46 S.L.R. 214; 1909, 1 S.L.T. 28.

APPENDIX I.

THE SHERIFF COURTS (SCOTLAND) ACTS,
1907 AND 1913,

AND

EXCERPTS FROM CODIFYING ACT OF SEDERUNT
1913, AND SUBSEQUENT ACTS OF SEDERUNT
AFFECTING PRACTICE IN THE SHERIFF COURT.

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APPENDIX I.

I. THE SHERIFF COURTS (SCOTLAND) ACT, 1907,

AS AMENDED BY

THE SHERIFF COURTS (SCOTLAND) ACT, 1913

[NOTE.—The Act of 1913, sec. 7, provides that “the principal Act (*i.e.* the Act of 1907) and this Act may be cited together as the Sheriff Courts (Scotland) Acts, 1907 and 1913, and shall be read and construed together as one Act.”

The alterations effected by the amending Act of 1913 are incorporated in the text of the Act of 1907 as printed on the following pages, but indicated by being enclosed in square brackets. In the previous edition of this book the superseded terms of the 1907 Act were for convenient reference shown in footnotes. It is thought that this may now be dispensed with, reference to the provisions in force between 1907 and 1913 being now seldom necessary.

The Act of 1913 is printed on p. 337.]

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¹ Section 9 repealed by Act of 1913.

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AN ACT TO REGULATE AND AMEND THE LAWS AND PRACTICE RELATING TO THE CIVIL PROCEDURE IN SHERIFF COURTS IN SCOTLAND, AND FOR OTHER PURPOSES. [7 EDW. VII. CH. 51.—28TH AUGUST 1907.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PRELIMINARY

1. SHORT TITLE.—This Act may be cited for all purposes as the Sheriff Courts (Scotland) Act, 1907.

2. COMMENCEMENT.—Unless otherwise specially enacted this Act shall come into operation on the first day of January one thousand nine hundred and eight.

3. INTERPRETATION.—In construing this Act (unless where the context is repugnant to such construction)—

- (a) "Sheriff" includes sheriff-substitute;
- (b) "Tenant" includes sub-tenant;
- (c) "Lease" includes sub-lease;
- (d) "Action" [or cause] includes every civil proceeding competent in the ordinary sheriff court;
- (e) "Person" includes company, corporation, or association and firm of any description nominate or descriptive, or any Board corporate or unincorporate;
- (f) "Sheriff-clerk" includes sheriff-clerk depute;
- (g) "Agent" means a law-agent enrolled in terms of the Law Agents (Scotland) Act, 1873 (36 & 37 Vict. c. 63);
- (h) "Final judgment" means an interlocutor which, by itself, or taken along with previous interlocutors, disposes of the subject-matter of the cause, notwithstanding that judgment may not have been pronounced on every question raised, and that expenses found due may not have been modified, taxed, or decerned for;
- (i) "Summary cause" includes [actions (other than actions brought and conducted in the Small Debt Court, and claims under the Workmen's Compensation Act) for payment of money not exceeding fifty pounds in amount, exclusive of interest and expenses, and all actions in which either the parties admit that the value of the action, exclusive of interest and expenses, does

- not exceed fifty pounds, or which they consent at any stage shall be tried summarily];
- (j) "Small Debt Acts" means and includes the Small Debt (Scotland) Acts, 1837 to 1889, and Acts explaining or amending the same;
 - (k) "Initial writ" means the statement of claim, petition, note of appeal, or other document by which the action is initiated;
 - (l) "Procurator-fiscal" means procurator-fiscal in the sheriff court;
 - (m) "Workmen's Compensation Act" means the Workmen's Compensation Act, 1906 (6 Edw. VII. c. 58), and any Acts explaining or amending the same;
 - (n) "Pursuer" means and includes any person making a claim or demand, or seeking any warrant or order competent in the sheriff court;
 - (o) "Defender" means and includes any person who is required to be called in any action;
 - (p) "Summary application" means and includes all applications of a summary nature brought under the common law jurisdiction of the sheriff, and all applications, whether by appeal or otherwise, brought under any Act of Parliament which provides, or, according to any practice in the sheriff court, which allows that the same shall be disposed of in a summary manner, but which does not more particularly define in what form the same shall be heard, tried, and determined;
 - [(q) "Employee" includes the legal personal representative of an employee, and any person who, by the law of Scotland, may be entitled to solatium in respect of the death of an employee.]

JURISDICTION

4. JURISDICTION.—The jurisdiction of the sheriffs, within their respective sheriffdoms, shall extend to and include all navigable rivers, ports, harbours, creeks, shores, and anchoring grounds in or adjoining such sheriffdoms. And the powers and jurisdictions formerly competent to the High Court of Admiralty in Scotland in all maritime causes and proceedings, civil and criminal, including such as may apply to persons furth of Scotland, shall be competent to the sheriffs, provided the defender shall upon any legal ground of jurisdiction be amenable to the jurisdiction of the sheriff before whom such cause or proceeding may be raised, and provided also that it shall not be competent to the sheriff to try any crime committed on the seas which it would not be competent for him to try if the crime had been committed on land: Provided always that where sheriffdoms are separated by a river, firth, or estuary, the sheriffs on either side shall have concurrent jurisdictions over the intervening space occupied by water.

5. EXTENSION OF JURISDICTION.—Nothing herein contained

shall derogate from any jurisdiction, powers, or authority presently possessed or in use to be exercised by the sheriffs of Scotland, and such jurisdiction shall extend to and include—

- (1) Actions of declarator (except declarators of marriage or nullity of marriage, and actions the direct or main object of which is to determine the personal status of individuals):
- (2) [Actions of aliment, provided that as between husband and wife they are actions of separation and aliment, adherence and aliment or interim aliment, and actions for regulating the custody of children:]
- (3) Actions of division of commonalty and of division or division and sale of common property, in which cases the Act of 1695 concerning the division of commonalties shall be read and construed as if it conferred jurisdiction upon the sheriff court in the same manner as upon the Court of Session:
- (4) Actions relating to questions of heritable right or title (except actions of adjudication save in so far as now competent and actions of reduction) including all actions of declarator of irritancy and removing, whether at the instance of a superior against a vassal or of a landlord against a tenant:
- (5) Suspension of charges or threatened charges upon the decrees of court granted by the sheriff or upon decrees of registration proceeding upon bonds, bills, contracts or other obligations registered in the books of the sheriff court, the books of council and session, or any others competent where the debt exclusive of interest and expenses does not exceed fifty pounds:

Provided that actions relating to questions of heritable right or title, including irritancy and removing or to division of commonalties or division or divisions and sale, of common property shall, if raised in the sheriff court, be raised in the sheriff court of the jurisdiction and district where the property forming the subject in dispute is situated, and all parties against whom any such action may be brought shall in such action be subject to that jurisdiction: Provided also that it shall be competent for either party at the closing of the record or within six days thereafter to require the cause to be remitted to the Court of Session in the case of actions—

- (a) Relating to questions of heritable right and title where the value of the subject in dispute exceeds fifty pounds by the year or one thousand pounds in value:
- (b) Relating to the right of succession to moveables where the value of the subject in dispute exceeds one thousand pounds:
- (c) Relating to division of commonalty or division or division and sale of common property where the value of the subject in dispute exceeds fifty pounds by the year or one thousand pounds value:

Provided also, that on cause shown or *ex proprio motu* the sheriff may at any stage remit to the Court of Session any action [mentioned in the second subsection of this section].

6. ACTION COMPETENT IN SHERIFF COURT.—Any action competent in the sheriff court may be brought within the jurisdiction of the sheriff—

- (a) [Where the defender (or when there are several defenders over each of whom a sheriff court has jurisdiction in terms of this Act, where one of them) resides within the jurisdiction, or having resided there for at least forty days has ceased to reside there for less than forty days and has no known residence in Scotland:]
- (b) Where the defender carries on business, and has a place of business within the [jurisdiction], and is cited either personally or at such place of business:
- (c) Where the defender is a person not otherwise subject to the jurisdiction of the courts of Scotland, and a ship or vessel of which he is owner or part owner or master, or goods, debts, money, or other moveable property belonging to him, have been arrested within the jurisdiction:
- (d) Where the defender is the owner or part owner or tenant or joint tenant, whether individually or as a trustee of heritable property within the jurisdiction, and the action relates to such property or to his interest therein:
- (e) Where the action is for interdict against an alleged wrong being committed or threatened to be committed within the jurisdiction:
- (f) Where the action relates to a contract the place of execution or performance of which is within the jurisdiction, and the defender is personally cited there:
- (g) Where in an action of furthcoming or multiplepounding the fund or subject *in medio* is situated within the jurisdiction; or the arrestee or holder of the fund is subject to the jurisdiction of the court:
- (h) Where the party sued is the pursuer in any action pending within the jurisdiction against the party suing:
- (i) Where the action arises out of the delict of the defender within the jurisdiction, and he is personally cited there:
- (j) Where the defender prorogates the jurisdiction of the court.

7. PRIVATIVE JURISDICTION IN CAUSES UNDER FIFTY POUNDS VALUE.—Subject to the provisions of this Act and of the Small Debt Acts, all causes not exceeding fifty pounds in value exclusive of interest and expenses competent in the sheriff court shall be brought and followed forth in the sheriff court only, and shall not be subject to review by the Court of Session:

Provided that nothing herein contained shall affect any right of appeal competent under any Act of Parliament in force for the time being.

8. SUMMARY CAUSE PROCEDURE AND APPEAL.—In a summary

cause the sheriff shall order such procedure as he thinks requisite, and (without a record of the evidence, unless on the motion of either party [made before the examination of witnesses is begun], the sheriff shall order that the evidence be recorded) shall dispose of the cause without delay by interlocutor containing findings in fact and in law. Where the evidence has been recorded the judgment of the sheriff-substitute upon fact and law may in ordinary form be brought under review of the sheriff, but where the evidence has not been recorded, the findings in law only shall be subject to review.

¹ 10. PRIVILEGE NOT TO EXEMPT FROM JURISDICTION.—No person shall be exempt from the jurisdiction of the sheriff court on account of privilege by reason of being a member of the College of Justice.

SHERIFFS

11. APPOINTMENT OF SHERIFFS AND SALARIED SHERIFFS-SUBSTITUTE.—The right of appointing to the salaried offices of sheriff and salaried sheriff-substitute shall be vested in His Majesty, and shall be exercised on the recommendation of the Secretary for Scotland.

12. QUALIFICATION FOR SHERIFF AND SALARIED SHERIFF-SUBSTITUTE.—Every person appointed to the office of sheriff shall be an advocate of five years' standing at least or, if not an advocate, a sheriff-substitute of five years' standing at least; and every person appointed to the office of salaried sheriff-substitute shall be an advocate or a law agent within the meaning of the Law Agents (Scotland) Act, 1873 (36 & 37 Vict. c. 63): Provided always that such advocate or law agent shall be of not less than five years' standing in his profession.

13. REMOVAL FROM OFFICE OF SHERIFF AND SALARIED SHERIFF-SUBSTITUTE.—It shall be lawful for the Secretary for Scotland, upon a report prepared at his instance by the Lord President of the Court of Session and the Lord Justice-Clerk for the time being, declaring that a sheriff in Scotland is by reason of inability, neglect of duty, or misbehaviour unfit for his office, to issue an order for his removal from office: Provided always that such order shall lie before both Houses of Parliament for a period of four consecutive weeks while Parliament is sitting, and, if either House of Parliament within that period resolve that such order ought not to take effect, the same shall be of no effect, but otherwise shall come into operation at the expiration of the said period. In this paragraph "sheriff" does not include "sheriff-substitute."

A salaried sheriff-substitute shall be removable from his office by the Secretary for Scotland for inability or misbehaviour upon the report of the Lord President of the Court of Session and the Lord Justice-Clerk for the time being.

14. SALARIES OF SHERIFFS AND SHERIFFS-SUBSTITUTE.—It shall be lawful to grant to any sheriff or sheriff-substitute such salary as to the Treasury may seem meet, and every such salary shall

¹ Section 9 of Act of 1907 is repealed by Act of 1913.

be paid by four equal quarterly instalments, and shall be charged upon and be payable out of the Consolidated Fund.

15. LEAVE OF ABSENCE TO SHERIFF.—It shall be lawful for the Secretary for Scotland, on an application made by or on behalf of any sheriff for leave of absence on account of temporary illness or other reasonable cause, to grant such leave of absence for such period as he shall deem proper, and to appoint some other person who shall be a sheriff of some other sheriffdom, or an advocate of not less than five years' standing, to act as interim sheriff in the place and during the absence of such sheriff, and on such interim appointment being made to fix what proportion of the salary of the sheriff shall be paid to the interim sheriff, and to certify the same in writing, and such certificate when presented in Exchequer to the King's and Lord Treasurer's Remembrancer shall be sufficient warrant for him for payment to such interim sheriff of the proportion of the sheriff's salary therein mentioned. A sheriff appointed to be interim sheriff under this section shall not by accepting such interim appointment vacate his office as sheriff. An interim sheriff appointed under this section shall have and exercise all the powers and privileges and perform all the duties of the sheriff, and his acts, orders, and judgments shall have the same force and effect as if done, made, or pronounced by the sheriff. In this section "sheriff" does not include sheriff-substitute.

16. LEAVE OF ABSENCE TO SALARIED SHERIFF-SUBSTITUTE.—In the event of any salaried sheriff-substitute, by reason of ill-health, being temporarily unable to discharge the duties of his office, it shall be lawful for the Secretary for Scotland on application being made to him by or on behalf of such sheriff-substitute to appoint a person qualified to fill the office of sheriff-substitute to act *ad interim* in the place and during the absence of such sheriff-substitute, and on such interim appointment being made the Treasury may, on the recommendation of the Secretary for Scotland, allow such interim sheriff-substitute such remuneration as they think fit out of moneys to be provided by Parliament.

17. HONORARY SHERIFF-SUBSTITUTE.—The sheriff may by writing under his hand appoint such persons as he thinks proper to hold the office of honorary sheriff-substitute within his sheriffdom during his pleasure, and for whom he shall be answerable. An honorary sheriff-substitute, during the subsistence of his commission, shall be entitled to exercise the powers and duties appertaining to the office of sheriff-substitute. An honorary sheriff-substitute shall hold office, notwithstanding the death, resignation, or removal of the sheriff, until his commission shall be recalled by a succeeding sheriff. In this section "sheriff" does not include sheriff-substitute.

18. COURTS TO BE HELD BY SHERIFFS IN THEIR SHERIFFDOMS.—Every sheriff shall, unless prevented by indisposition or other unavoidable cause, hold annually in his sheriffdom courts for the discharge of the judicial business of the sheriffdom: and such courts shall continue until the causes ready for trial or hearing

when such courts commence shall be disposed of; and each sheriff shall give due notice of the times and places of such courts; and, unless otherwise prescribed, each sheriff shall, once in the year, go on the small debt circuit, in use to be held by the sheriff-substitute, and shall on such occasions, in addition to holding the small debt court, despatch as much of the ordinary business as may be ready for adjudication, or as time may permit; and each sheriff shall annually, within ten days after the twelfth day of November, make a return to the Secretary for Scotland of the number of courts and sittings held by him, and of the periods of holding each such court, in the immediately preceding year, stating the cause of absence in case the court hereinbefore directed shall not have been held by him in terms of this Act, provided that the above provisions shall not extend to the sheriffs of the Lothians and Peebles and of Lanarkshire: Provided always that it shall be lawful for the Secretary for Scotland to prescribe from time to time the number of courts to be held by the several sheriffs and the times and places for holding such courts, and also from time to time to prescribe the duties of the office of sheriff which such sheriffs respectively are required to perform personally. In this section "sheriff" does not include sheriff-substitute.

19. SECRETARY FOR SCOTLAND TO REGULATE NUMBER, DUTIES, AND RESIDENCE OF SALARIED SHERIFFS-SUBSTITUTE.—It shall be lawful for the Secretary for Scotland from time to time to prescribe the number of salaried sheriffs-substitute of the several sheriffdoms, and the places at which such salaried sheriffs-substitute respectively are required generally to reside and to attend for the performance of their duties, the number of courts to be held by such sheriffs-substitute, the times and places of holding such courts, and the duties to be performed by such sheriffs-substitute; and it shall also be lawful for the Secretary for Scotland, if he shall think fit, to direct that the sheriff-substitute of one county shall perform the duties of sheriff-substitute in an adjacent county; and any such direction shall be equivalent in all respects to a commission to act in such adjacent county in favour of the sheriff-substitute so directed; and no salaried sheriff-substitute shall be absent from the sheriffdom for more than six weeks in any year nor for more than two weeks at any one time nor so as to interfere with the regular sittings of his court, without the special consent in writing of the sheriff, who shall be bound, in the event of his giving such consent, either to attend personally during the absence of such substitute, or to appoint another person qualified as in section twelve hereof to act as substitute in his stead.

20. ANNUITIES TO SHERIFFS AND SALARIED SHERIFFS-SUBSTITUTE.—It shall be lawful for the Treasury, upon the recommendation of the Secretary for Scotland, to grant an annuity payable in like manner as the salaries to any person who has held, now holds, or may hereafter hold the office of sheriff or salaried sheriff-substitute whose period of service (notwithstanding that such service may not have been continuous and may have been in

different sheriffdoms and may have been partly as sheriff-substitute and partly as sheriff) has been not less than ten years: Provided always that such annuity shall not exceed one-third of the salary payable to such person in case the period of his service shall have been not less than ten years, and shall not exceed two-thirds of such salary in case the period of service shall have been not less than fifteen years, and shall not exceed three-fourths of such salary in case the period of service shall have been not less than twenty years or upwards: Provided also that (except as hereinafter provided) no such annuity shall be granted to any sheriff or sheriff-substitute unless the periods of his actual service shall, when taken together, extend to one or other of the periods of service before mentioned, and that in computing the amount of said annuity the emoluments drawn by him on an average of the five preceding years shall be held to constitute his salary: Provided also that no such annuity shall be granted unless such sheriff or sheriff-substitute shall have duly fulfilled the duties of his office during one of the periods before mentioned, and is from age or permanent infirmity disabled from the due exercise of his office, which facts shall be certified by the Lord President, the Lord Justice-Clerk, and the Lord Advocate for the time being as having been established to their satisfaction: Provided also that if a sheriff is removed under section thirteen hereof before he has completed ten years' service on the ground that he is by reason of inability unfit for his office, it shall be lawful for the Treasury to grant him an annuity of such amount and for such period as they shall consider just in all the circumstances, but in no case exceeding three-tenths of the salary payable to such sheriff, and any such annuity shall be charged upon and payable out of the same fund and in the same manner as annuities to sheriffs are paid and charged under the first section of the Public Revenue and Consolidated Fund Charges Act, 1854 (17 & 18 Vict. c. 94). In the last proviso of this section "sheriff" shall not include sheriff-substitute.

21. DISQUALIFICATIONS AND DISABILITIES OF SHERIFFS AND SALARIED SHERIFFS-SUBSTITUTE.—It shall not be lawful for a sheriff to advise, plead, or otherwise act as an advocate before any of the King's Courts at Edinburgh, or at the Circuit Court, in any cause civil or criminal arising within or coming from his sheriffdom; and no sheriff or salaried sheriff-substitute shall be steward, chamberlain, factor, agent, or commissioner to any subject whatsoever, or shall exercise, or act in the employment, service, or office of such steward, chamberlain, factor, agent, or commissioner; and no sheriff or salaried sheriff-substitute shall be capable of being elected or of sitting or voting as a member of the House of Commons, nor shall he be entitled to vote at any election for any member of Parliament held within his sheriffdom; nor shall he act directly or indirectly as an agent for any candidate in any matter connected with, or preparatory to, any election [occurring within his jurisdiction]; and it shall not be lawful for a salaried sheriff-substitute to engage in legal, banking, or other

private practice or business, or to act directly or indirectly as a procurator before any court, or to be in partnership with any person so engaged or acting, nor shall such sheriff-substitute be appointed to any office, except such office as shall be by statute attached to the office of sheriff-substitute.

Any sheriff or salaried sheriff-substitute acting contrary to the provisions of this section shall be guilty of misbehaviour within the meaning of section thirteen of this Act.

PROCURATORS-FISCAL

22. APPOINTMENT OF PROCURATOR-FISCAL.—From and after the passing of this Act the right of appointing to the office of procurator-fiscal shall be vested in the Lord Advocate.

23. REMOVAL OF PROCURATOR-FISCAL.—No person holding the office of procurator-fiscal at the passing of this Act, and receiving salary on that account, and no person who may be hereafter appointed to the office of procurator-fiscal, shall be removable from office, except by the Secretary for Scotland, for inability or misbehaviour, upon a report by the Lord President of the Court of Session and the Lord Justice-Clerk for the time being.

24. PROCURATOR-FISCAL MAY APPOINT DEPUTE.—A procurator-fiscal may, with the consent of the Lord Advocate, grant a deputation to one or more fit persons, for whose actings he shall be responsible, to sign writs, to appear in court, and to conduct prosecutions and inquiries in his name and on his behalf. In the event of a vacancy in the office of procurator-fiscal any depute or deputes so appointed shall have and discharge all the powers, privileges, and duties of a procurator-fiscal until such vacancy is filled up.

SESSIONS

25. SESSIONS.—In each sheriff court there shall be held two sessions in the year, a winter and a summer session. The winter session shall extend from the first ordinary court day in October to the last ordinary court day in March. The sittings of the court may, at Christmas time, be suspended for a period not exceeding fifteen days. The summer session shall extend from the first ordinary Court day in May to the last ordinary Court day in July.

26. VACATION COURTS.—The sheriff shall, before the termination of each winter session, appoint at least one court day during the spring vacation for the despatch of civil business, and before the termination of each summer session he shall in like manner appoint at least two court days during the autumn vacation for the same purpose. Any cause may proceed during vacation as during session, and in all causes interlocutors may competently be pronounced during vacation.

APPEALS

27. APPEAL TO SHERIFF.—Subject to the provisions of this

Act an appeal to the sheriff shall be competent against all final judgments of the sheriff-substitute and also against interlocutors—

- (a) Granting or refusing interdict, interim or final;
- (b) Granting interim decree for payment of money other than a decree for expenses, or making an order *ad factum præstandum*;
- (c) Sisting an action;
- (d) Allowing or refusing or limiting the mode of proof not being an interlocutor fixing a diet for jury trial;
- (e) [Refusing a reponing note; or
- (f)] Against which the Sheriff-substitute, either *ex proprio motu* or on the motion of any party, grants leave to appeal;

Provided always that notwithstanding the death, resignation or removal of a sheriff, appeals may be taken from the judgment of the sheriff-substitute, which appeals shall be heard by the succeeding sheriff when he shall enter upon office. [It shall be competent for the sheriff, when the action is before him on appeal on any point, to open the record *ex proprio motu* if the record shall appear to him not to have been properly made up, or to allow further proof.]

28. Appeal to Court of Session.—[(1) Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment either of a sheriff or of a sheriff-substitute if the interlocutor appealed against is a final judgment; or is an interlocutor—

- (a) Granting interim decree for payment of money other than a decree for expenses; or
- (b) Sisting an action; or
- (c) Refusing a reponing note; or
- (d) Against which the sheriff or sheriff-substitute, either *ex proprio motu* or on the motion of any party, grants leave to appeal: Provided that no appeal shall be competent where the cause does not exceed fifty pounds in value, exclusive of interest and expenses, or is being tried as a summary cause, unless the sheriff, after final judgment by him, on an appeal on the motion of either party made within seven days of the date of the final interlocutor, certifies the cause as suitable for appeal to the Court of Session;

(2) Nothing in this section nor in section twenty-seven of this Act contained shall affect any right of appeal or exclusion of such right provided by any Act of Parliament in force for the time being.]

29. EFFECT OF APPEAL.—An appeal shall be effectual to submit to review the whole of the interlocutors pronounced in the cause, and shall be available to and may be insisted in by all other parties in the cause notwithstanding they may not have noted separate appeals. An appeal shall not prevent immediate execution of a warrant of sequestration for rent, or of warrants to take inventories, or place effects in custody *ad interim*, or warrants for

interim preservation, and an interim interdict, although appealed against, shall be binding till recalled.

REMOVAL OF CAUSE TO COURT OF SESSION FOR JURY TRIAL

30. REMOVAL OF CAUSE FOR JURY TRIAL.—In cases originating in the sheriff court (other than claims by employees against employers in respect of injury caused by accident arising out of and in the course of their employment and concluding for damages under the Employers' Liability Act, 1880 [or at common law], or alternatively at common law or under the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42)), where the claim is in amount or value above fifty pounds, and an order has been pronounced allowing proof (other than an order for proof to lie *in retentis* or for recovery of documents), it shall, within six days thereafter, be competent to either of the parties, who may conceive that the cause ought to be tried by jury, to require the cause to be remitted to the Court of Session for that purpose where it shall be so tried: Provided, however, that the Court of Session shall, if it thinks the case unsuitable for jury trial, have power to remit the case back to the sheriff, or to remit it to a Lord Ordinary, or to send it for proof before a Judge of the Division before whom the cause depends.

JURY TRIAL IN SHERIFF COURT

31. JURY TRIAL IN SHERIFF COURT.—In any action raised in the sheriff court by an employee against his employer concluding for damages under the Employers' Liability Act, 1880 [or at common law], or alternatively under that Act or at common law in respect of injury caused by accident arising out of and in the course of his employment, where the claim exceeds fifty pounds, either party may, so soon as proof has been allowed, or within six days thereafter, require that the cause shall be tried before a jury, in which case the sheriff shall appoint the action to be tried before a jury of seven persons. The verdict of the jury shall be applied in an interlocutor by the sheriff, which shall be the final judgment in the cause, and may, subject to the provisions of this Act, be appealed to either division of the Court of Session, but that only upon one or more of the following grounds—

- (1) That the verdict has been erroneously applied by the sheriff;
- (2) That the verdict is contrary to the evidence;
- (3) That the sheriff had in the course of the trial unduly refused or admitted evidence or misdirected the jury;
- (4) That an award of damages is inadequate or is excessive.

Upon such appeal the court may refuse the appeal or may find that the verdict was erroneously applied, and give judgment accordingly, or may set aside the verdict and order a new trial, provided that if the judges are equally divided in opinion the verdict shall stand.

¹ [32. Procedure at Jury Trials (Section 6 of Act of 1913).—

¹ Section 32 of 1907 Act is repealed by Act of 1913.

Where a jury trial has been ordered the sheriff shall issue an interlocutor fixing a time and place for the trial, being not sooner than fourteen days from the date of his interlocutor, and at the trial he may, or if required by either party shall, after the conclusion of the evidence, propound to the jury question or questions of fact to be answered by them, and the jury shall in their verdict give specific answers to such question or questions.]

33. REMUNERATION OF JURORS.—Where jury trial has been ordered the party moving for it shall, on each day the trial proceeds, before the proceedings commence, deposit with the sheriff-clerk the sum of three pounds ten shillings, which deposit shall form part of the expenses of the cause; failing any such deposit being made, the sheriff may dismiss the cause. Out of said fund the sheriff-clerk shall pay to each juror a fee of ten shillings for each day on which he is empanelled. When a jury trial is not proceeded with, said deposit shall be returned to the depositor.

REMOVINGS

34. REMOVINGS.—Where lands exceeding two acres in extent are held under a probative lease specifying a term of endurance, and whether such lease contains an obligation upon the tenant to remove without warning or not, such lease, or an extract thereof from the books of any court of record, shall have the same force and effect as an extract decree of removing obtained in an ordinary action at the instance of the lessor, or any one in his right, against the lessee or any party in possession, and such lease or extract shall along with authority in writing signed by the lessor or any one in his right or by his factor or law agent be sufficient warrant to any sheriff-officer or messenger-at-arms of the sheriffdom within which such lands or heritages are situated to eject such party in possession, his family, sub-tenants, cottars, and dependants, with their goods, gear, and effects, at the expiry of the term or terms of endurance of the lease: Provided that previous notice in writing to remove shall have been given—

- (a) When the lease is for three years and upwards not less than one year and not more than two years before the termination of the lease; and
- (b) In the case of leases from year to year (including lands occupied by tacit relocation) or for any other period less than three years, not less than six months before the termination of the lease (or where there is a separate lease as regards land and houses or otherwise before that lease which is first in date):

Provided that if such written notice as aforesaid shall not be given the lease shall be held to be renewed by tacit relocation for another year, and thereafter from year to year: Provided further that nothing contained in this section shall affect the right of the landlord to remove a tenant who has been sequestrated under the Bankruptcy (Scotland) Act, 1856 (19 & 20 Vict. c. 79), or against whom a decree of *cessio* has been pronounced under the Debtors

(Scotland) Act, 1880 (43 & 44 Vict. c. 34), or who by failure to pay rent has incurred any irritancy of his lease or other liability to removal: Provided further that removal or ejection in virtue of this section shall not be competent after six weeks from the date of the ish last in date: Provided further that nothing herein contained shall be construed to prevent proceedings under any lease in common form; and that the foregoing provisions as to notice shall not apply to any stipulations in a lease entitling the landlord to resume land for building, planting, feuing, or other purposes or to subjects let for any period less than a year.

35. LETTER OF REMOVAL.—Where any tenant in possession of any lands exceeding two acres in extent (whether with or without a written lease) shall, either at the date of entering upon the lease or at any other time, have granted a letter of removal, either holograph or attested by one witness, such letter of removal shall have the same force and effect as an extract decree of removing, and shall be a sufficient warrant for ejection to the like effect as is provided in regard to a lease or extract thereof, and shall be operative against the granter of such letter of removal or any party in his right within the same time and in the same manner after the like previous notice to remove: Provided always that where such letter is dated and signed within twelve months before the date of removal or before the first ish, if there be more than one ish, it shall not be necessary that any notice of any kind shall be given by either party to the other.

36. NOTICE TO REMOVE.—Where lands exceeding two acres in extent are occupied by a tenant without any written lease, and the tenant has given to the proprietor or his agent no letter of removal, the lease shall terminate on written notice being given to the tenant by or on behalf of the proprietor, or to the proprietor by or on behalf of the tenant not less than six months before the determination of the tenancy, and such notice shall entitle the proprietor, in the event of the tenant failing to remove, to apply for and obtain a summary warrant of ejection against the tenant and every one deriving right from him.

37. NOTICE OF TERMINATION OF TENANCY.—In all cases where houses, with or without land attached, not exceeding two acres in extent, lands not exceeding two acres in extent let without houses, mills, fishings, shootings, and all other heritable subjects (excepting land exceeding two acres in extent) are let for a year or more, notice of termination of tenancy shall be given in writing to the tenant by or on behalf of the proprietor or to the proprietor by or on behalf of the tenant: Provided always that notice under this section shall not warrant summary ejection from the subjects let to a tenant, but such notice, whether given to or by or on behalf of the tenant, shall entitle the proprietor to apply to the sheriff for a warrant for summary ejection in common form against the tenant and every one deriving right from him: Provided further that the notice provided for by this section shall be given at least forty days before the fifteenth day of May when the termination of the tenancy is the term of Whitsunday, and at least forty days

before the eleventh day of November when the termination of the tenancy is the term of Martinmas.

SUMMARY REMOVINGS

38. SUMMARY REMOVING.—Where houses or other heritable subjects are let for a shorter period than a year, any person by law authorised may present to the sheriff a summary application for removing, and a decree pronounced in such summary cause shall have the full force and effect of a decree of removing and warrant of ejection. Where such a let is for a period not exceeding four months, notice of removal therefrom shall, in the absence of express stipulation, be given as many days before the ish as shall be equivalent to at least one-third of the full period of the duration of the let; and where the let exceeds four months, notice of removal shall, in the absence of express stipulation, be given at least forty days before the expiry of the said period.

PROCEDURE RULES

39. PROCEDURE RULES.—Subject to the provisions of any Act of Parliament in force after the passing of this Act, the procedure in all civil causes shall be conform to the rules of procedure set forth in the First Schedule hereto annexed. Such rules shall be construed and have effect as part of this Act.

40. COURT OF SESSION TO REGULATE FEES, ETC.—The Court of Session may from time to time, by Act of Sederunt, make such regulations not inconsistent with the provisions of this Act as may be necessary for carrying into effect the purposes thereof for regulating the practice of the sheriff courts (including diligence and procedure under the Small Debt Acts); and for regulating the fees of agents, officers, shorthand writers, and others, and, with the concurrence of the Treasury, for regulating the fees of Court; and for altering, amending, or adding to the rules of procedure in the First Schedule hereto: Provided that every such Act of Sederunt shall, within one week from the date thereof, be transmitted by the Lord President of the Court of Session to the Secretary for Scotland, in order that it may be laid before the Houses of Parliament; and if either of the Houses of Parliament shall within thirty-six days after it has been laid before them resolve that the whole or any part of such Act of Sederunt ought not to continue in force, the whole or such part thereof as shall be included in such resolution shall from and after the date of the passing of such resolution cease to be binding.

41. MEETINGS OF SHERIFFS.—For the purpose of preserving uniformity in the proceedings of sheriff courts, the sheriffs shall meet in Edinburgh once at least in each year, and may then, or at any other meeting, formulate for the consideration of the Court of Session any regulations which they propose should be enacted by Act of Sederunt, a printed draft of the same having been exhibited in each sheriff court for the space of fourteen days before the same is submitted to the court: Provided also that the neces-

sary expenses of such meetings of sheriffs and of preparing and printing such propositions shall be allowed in the annual accounts in Exchequer of such one of the sheriffs as may from time to time be appointed by them to be their convener in the like manner as other ordinary expenses of sheriffs are allowed. In this section "sheriff" does not include "sheriff-substitute."

SMALL DEBT ACTS

42. EXTENSION OF SMALL DEBT JURISDICTION TO £20.—The provisions of the Small Debt Acts shall extend and apply to all causes competent thereunder where the value of the cause does not exceed twenty pounds, and wherever the words "eight pounds six shillings and eightpence" or the words "twelve pounds" occur in these Acts they shall be read and construed as if for these words there were substituted the words "twenty pounds."

43. SMALL DEBT SEQUESTRATION FOR RENT.—The provisions of the Small Debt Acts for sequestration for rent shall extend to all sequestrations applied for *currente termino* or in security.

44. PARTIES MAY APPEAR BY AGENTS IN SMALL DEBT COURT.—Section eight of the Small Debt Amendment (Scotland) Act, 1889 (52 & 53 Vict. c. 26), is hereby repealed, and in lieu thereof it is enacted that in any cause brought under the Small Debt Acts any party may appear by or along with an agent, and the sheriff may allow and include in the expenses of the cause a fee to such agent.

45. PROCEDURE RULES APPLICABLE TO SMALL DEBT CAUSES.—The provisions of section three (except subsections (d), (h), (i), (k), (l), (m), and (p)), section four, subsection (2) of section five, so far as relating to claims for aliment, section six (except subsection (e)), section forty-nine and section fifty-one hereof, and the rules ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, nineteen, twenty-one, twenty-six, fifty, fifty-five, sixty, sixty-three, seventy, seventy-nine, eighty, one hundred and twenty-six, one hundred and twenty-seven, one hundred and twenty-eight, one hundred and twenty-nine, one hundred and fifty-one, in the First Schedule hereto shall, so far as appropriate, apply to causes under the Small Debt Acts.

46. SECTIONS 10 AND 11 OF THE DEBTORS (SCOTLAND) ACT, 1838, NOT TO APPLY TO SMALL DEBT CAUSES.—The provisions of sections ten and eleven of the Debtors (Scotland) Act, 1838 (1 & 2 Vict. c. 114), shall not apply to decrees of delivery under the Small Debt Amendment (Scotland) Act, 1889, but such decrees shall be enforceable by imprisonment under the warrant for execution contained in Schedule B of the Small Debt Amendment (Scotland) Act, 1889.

47. SECOND EXTRACT OF SMALL DEBT DECREE COMPETENT.—It shall be lawful to issue a second or further extract of any decree under the Small Debt Acts, in the form as nearly as may be of Schedule B or C of the Small Debt Amendment (Scotland) Act, 1889, which extract may be written upon a separate paper, and shall have the same force and effect in all respects as the first extract.

48. SMALL DEBT CAUSE MAY BE REMITTED TO ORDINARY COURT ROLL.—If the sheriff is of opinion that the importance of the questions raised in any cause brought under the Small Debt Acts warrants that course, he may at any stage remit the cause to his ordinary court roll either on cause shown or *ex proprio motu*, in which case the cause shall proceed in all respects (including appeal) as if it had been originally raised in the ordinary court.

POSTAL CHARGE

49. POSTAL CHARGE.—Where a charge is necessary upon a decree for payment of money granted in the small debt court, and the place of execution of the charge is more than twelve miles distant from the seat of the court where such decree was granted, a charge may be given by post in the manner prescribed by the Citation Amendment (Scotland) Act, 1882 (45 & 46 Vict. c. 77).

SUMMARY APPLICATIONS

50. SUMMARY APPLICATIONS.—In summary applications (where a hearing is necessary) the sheriff shall appoint the application to be heard at a diet to be fixed by him, and at that or any subsequent diet (without record of evidence unless the sheriff shall order a record) shall summarily dispose of the matter and give his judgment in writing: Provided that wherever in any Act of Parliament an application is directed to be heard, tried, and determined summarily or in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876 (39 & 40 Vict. c. 70), such direction shall be read and construed as if it referred to this section of this Act: Provided also that nothing contained in this Act shall affect any right of appeal provided by any Act of Parliament under which a summary application is brought.

THE POOR'S ROLL

51. POOR'S ROLL.—Where parties are unable from poverty to pursue or defend an action, it shall be lawful for the sheriff to admit such parties to the benefit of the poor's roll if, upon the report of the procurators for the poor, he is satisfied that such person is entitled thereto.

REPEAL

52. REPEAL OF STATUTES.—The enactments mentioned in the Second Schedule hereto annexed are hereby repealed to the extent mentioned in the third column of that Schedule, and all laws, statutes, Acts of Sederunt, orders and usages now in force so far as the same are inconsistent with the provisions of this Act, are also hereby repealed. But provided that all actions pending at the date of the commencement of this Act shall nevertheless proceed to final determination in all respects as if this Act had not been passed.

SCHEDULES

FIRST SCHEDULE (ss. 39, 40, AND 45)

RULES FOR REGULATING PROCEDURE IN THE ORDINARY COURT

FORMS OF PROCESS

1. INITIAL WRIT.—Subject to the provisions of the Titles to Land Consolidation (Scotland) Act, 1868, and the Conveyancing and Land Transfer (Scotland) Act, 1874, as regards service of heirs and completion of title, all actions shall be commenced by writ as nearly as may be in the Form A hereto annexed.

[2. There shall be annexed to the initial writ a statement (in the form of an articulate condescendence) of the facts which form the ground of action, and a note of the pursuer's pleas in law, which condescendence and note of pleas in law shall be held to constitute part of the initial writ.]

3. WRIT TO BE SIGNED.—The writ shall be signed by the pursuer or complainer or by his agent, and the name and address of pursuer's agent (if any) shall be upon the back of every service copy.

4. FORM OF FIRST WARRANT.—The warrant of citation shall be as nearly as may be—

(a) In summary causes and summary removings, and also in summary applications when citation is necessary and in cases under the Workmen's Compensation Act, in the Form B hereto annexed :

(b) In all other causes, in the Form C hereto annexed.

INDUCIÆ

5. INDUCIÆ OF CITATION.—Actions shall proceed upon seven days' warning or *induciæ* when the defender is within Scotland, or fourteen days when he is in Orkney or Shetland, or in any other island within Scotland or is furth of Scotland.

6. SPECIAL INDUCIÆ.—The sheriff may shorten or may extend the *induciæ*, but not so as to be in any case less than forty-eight hours.

CITATION

7. SIGNATURE OF WARRANTS.—Warrants may be signed by the sheriff-clerk, but any warrant may be signed by the sheriff or sheriff-substitute, and must be so signed if it contains an order for shortening or extending the *induciæ* or for interim interdict, sequestration, or other order not being an order for citation or warrant to arrest. In actions against persons furth of Scotland the warrant may authorise service edictally.

8. MODE OF CITATION.—Citation may be in the Form D hereto annexed, and the form of execution of citation, which shall be appended to or endorsed upon the initial writ, may be in the Form E hereto annexed.

9. ATTESTATION OF OFFICER'S EXECUTION OF CITATION.—If a warrant is executed by an officer, one witness shall be sufficient for the execution of citation and the execution shall be signed by the officer and the witness, and shall specify whether the citation was personal, or, if otherwise, the mode of citation.

10. ENDORSATION OF WARRANT BY SHERIFF-CLERK OF DEFENDER'S RESIDENCE NOT NECESSARY.—Any warrant of citation or any warrant

or precept of arrestment proceeding upon a depending action or liquid document of debt may in any competent manner be lawfully executed within the jurisdiction of any sheriff without endorsement by the sheriff-clerk of that jurisdiction, and, if executed by an officer, may be so executed by an officer of the court which granted the warrant or precept, or by an officer of the jurisdiction within which it is to be executed.

[11. Any individual or individuals, or any corporation or association, carrying on business under a firm or trading or descriptive name, may sue or be sued in such name without the addition of the name or names of such individual or individuals or any of them, or of any member or official of such corporation or association, and any extract of a decree pronounced in the sheriff court, or of a decree proceeding upon any deed, decree arbitral, bond, protest of a bill, promissory note or banker's note, or upon any other obligation or document on which execution may competently proceed recorded in the sheriff court books against such individual or individuals, or against such corporation or association, under such firm, trading or descriptive name shall be a valid warrant for diligence against such corporation, association, or firm, and such individual or individuals. Citation in any action may be made at the principal place where such business is carried on (including the place of business or office of the clerk or secretary of any corporation or association) when such place is within the jurisdiction of the sheriff court in which such action is brought, or otherwise at any place of business or office at which such business is carried on within the jurisdiction of such sheriff court.]

12. SERVICE OF NEW.—If it appear to the sheriff that there has been any irregularity in service upon a defender who has not appeared, the sheriff may authorise the pursuer or complainer to make service of new upon such conditions as to the sheriff shall seem just.

13. DEFENDER APPEARING BARRED OBJECTING TO CITATION.—A party who appears may not state any objection to the regularity of the service upon himself, and his appearance shall be deemed to remedy any defect in the service, unless where jurisdiction has been constituted by citation or by arrestment *ad fundandam jurisdictionem*.

14. CITATION OF A MINOR.—Service in ordinary form on a minor and on his father, as curator-at-law, or upon a minor and his tutors and curators if known to pursuer, or, if they are not known, upon the minor himself in ordinary form, and his tutors and curators edictally, shall be good and sufficient service on the minor for every purpose of law.

15. EDICTAL CITATION.—It shall be competent to execute edictally any warrant of citation granted or charge on an extracted decree pronounced by a sheriff against any person furth of Scotland, by delivery of a copy thereof at the office of the keeper of edictal citations at Edinburgh according to the mode established in regard to the execution edictally of citations and charges on warrants of the Court of Session; or by sending to such keeper in a registered post-letter a certified copy of such warrant or charge, of which copy the keeper shall acknowledge receipt. Every citation or charge so executed edictally shall be recorded in the record of edictal citations in Edinburgh in a separate record of edictal citations or charges against persons furth of Scotland cited or charged upon warrants proceeding from any Sheriff Court. Where the party cited or charged has a known residence or place of business in England or Ireland a copy of the writ and citation or of the decree and charge on fourteen days' *induciae* shall be posted in a registered letter to the party at such address, and the execution shall

express that this has been done. The sheriff-clerk shall in all warrants to cite persons furth of Scotland insert a warrant to cite edictally, and along with the execution of edictal citation pursuer's agent shall lodge a certificate of such postal intimation and the post office registered letter receipt.

CUSTODY OF PROCESS

16. CUSTODY OF PROCESS.—Every initial writ shall after tabling remain in the custody of the sheriff-clerk, unless the sheriff shall grant a special order to the contrary. A process may be borrowed only by an agent entitled to practise in the jurisdiction, or by his duly authorised clerk, for whom he shall be responsible. [All remedies (including caption) competent to enforce the return of a borrowed process may proceed on the warrant of the court from whose custody the process was obtained, and that whether the borrower is or is not resident within its jurisdiction.]

17. LOST DOCUMENTS MAY BE REPLACED BY COPIES.—When any number of process is lost or destroyed, a copy thereof authenticated in such manner as the sheriff may require, may be substituted, and shall, for the purposes of the action, be equivalent to the original.

18. INTERLOCUTOR SHEETS, ETC., TO BE LODGED BY PURSUER.—In a defended action the pursuer shall lodge with the sheriff-clerk principal and duplicate interlocutor sheets and a principal and borrowing inventory of process; and the sheriff-clerk shall endorse upon all pleadings the date when the same are lodged. The principal interlocutor sheets and the borrowing inventory shall remain in the custody of the sheriff-clerk.

TRANSFER OF CAUSES

19. TRANSFER OF CAUSE TO MORE CONVENIENT SHERIFFDOM WHERE SEVERAL DEFENDERS IN DIFFERENT SHERIFFDOMS.—Where an action in which there are two or more defenders has been brought in the court of the domicile of one of them, the sheriff may transfer the cause to any other court which has jurisdiction over any of the defenders, if in his opinion it is expedient that this should be done, and an action so transferred shall proceed in all respects as if it had been originally brought in that court.

20. SHERIFF ON CAUSE SHOWN MAY REMIT TO ANOTHER SHERIFFDOM.—The sheriff may upon sufficient cause, by interlocutor stating his reasons, remit any cause to another sheriffdom, and such interlocutor, when issued by a sheriff-substitute, shall by leave of the sheriff-substitute, and within seven days only, be subject to review by the sheriff, but shall not be further subject to review.

21. WHERE PLEA OF NO JURISDICTION STATED, CAUSE MAY BE REMITTED TO PROPER SHERIFFDOM.—Where a plea of no jurisdiction is sustained, the sheriff may, if he think proper, and upon such conditions as to costs as he may think fit, remit the cause to the sheriff before whom it appears to him it ought to have been brought, and it shall thereafter proceed in all respects as if it had been originally there brought. When such remit is made by the sheriff-substitute, the interlocutor remitting shall by leave of the sheriff-substitute and within seven days only be subject to review by the sheriff but shall not be further subject to review.

APPEARANCE

22. NOTICE OF APPEARANCE.—If a defender intend to state a defence he shall (except in a summary cause), before the expiry of the *inducie*,

[exhibit to the sheriff-clerk the service copy of the writ and lodge with him] a notice of appearance in the following terms:—

(Place and date)—C. D., (*design him*) defender, intends to defend the action against him (and others) at the instance of A. B. (*design him*).

C. D., *Defender*.
or X. Y. (add address),
Defender's Agent.

UNDEFENDED CAUSES

[23. IN UNDEFENDED CAUSE DECREE MAY BE GRANTED AT ANY TIME AFTER EXPIRY OF INDUCIÆ.—If the defender does not lodge a notice of appearance or does not answer, the sheriff may at any time, after the expiry of the *induciæ*, upon a written craving being endorsed on the initial writ by the pursuer or his agent, decern in terms of the crave of the initial writ, and at the same time or thereafter for expenses as the same may be certified by a note endorsed upon the initial writ by the auditor of court, subject to any restriction so endorsed or set forth in a minute by the pursuer or his agent: Provided that this rule shall not apply to actions of separation and aliment, adherence and aliment, or interim aliment, or to actions regulating the custody of children.]

24. EXTRACT OF DECREE IN ABSENCE IN SEVEN DAYS.—The sheriff-clerk may issue an extract of such decree after the expiry of seven days from the date of the sheriff's judgment.

25. FINALITY OF DECREE IN ABSENCE.—A decree pronounced in absence, and which has not been recalled or brought under review by suspension, where suspension is competent, or by reduction, shall become final, and be entitled to all the privileges of a decree *in foro*—

(a) In six months from its date, or from the date of charge under it, where the service of the writ or of the charge has been personal:

(b) In any event after the lapse of twenty years from its date.

26. AMENDMENT OF WRIT IN UNDEFENDED ACTION.—In an undefended action the sheriff may allow the pursuer or his agent to amend any error or defect in the initial writ, and may, if he see fit, order the amended writ to be served upon the defender, and may allow him to appear within such time as he may think proper. But the expense occasioned by such amendment shall not be chargeable against the defender, and such amendment shall not have the effect of validating diligence used on the dependence of the action so as to prejudice creditors of the defender, but such amendment shall be operative to the effect of obviating objections to such diligence when stated by the defender himself, or by any persons representing him by a title, or in right of a debt contracted by him subsequent to the using of such diligence, and any diligence which was competent upon the original writ shall be competent upon the amended writ.

REPONING

27. DEFENDER MAY BE REPONED AGAINST DECREE IN ABSENCE.—At any time before implement of a decree in absence, the defender may apply to be reponed by lodging with the sheriff-clerk and serving upon pursuer a note setting forth his proposed defence, and his explanation of his failure to appear.

28. UPON CONSIGNATION.—Along with this reponing note the defender shall consign the sum of two pounds in the hands of the sheriff-clerk.

29. SHERIFF MAY RECALL THE DECREE IN ABSENCE.—Upon such consignment the sheriff, if satisfied with the defender's explanation, may recall the decree so far as not implemented, whereupon the action shall proceed in all respects as if the defender had appeared.

30. OR REFUSE TO RECALL.—If the sheriff is not satisfied with the defender's explanations he may refuse the reponing note.

31. PURSUER ENTITLED TO CONSIGNED MONEY.—In either case the pursuer shall be entitled to uplift the consigned money.

32. REPONING NOTE TO OPERATE AS SIST OF DILIGENCE.—A reponing note, when duly lodged and intimated to the pursuer or to his agent, shall operate as a sist of diligence.

33. JUDGMENT UPON A REPONING NOTE FINAL.—Any interlocutor or order recalling, or incidental to the recall of a decree in absence, shall be final and not subject to review.

DEFENDED CAUSES

34. DEFENDED CAUSE TO BE TABLED.—Where appearance has been entered the sheriff-clerk shall enrol the cause for tabling on the first court day occurring after the expiry of the *inducia*.

35. IF NOT TABLED TO DROP FROM ROLL.—An action which has not been tabled, and in which protestation has not been craved, shall drop from the roll, but within three months the sheriff may direct it to be again enrolled for tabling under such conditions as to notice, or reserve, or expenses, or otherwise as he shall think fit.

36. IF CASE NOT TABLED DEFENDER MAY CRAVE PROTESTATION.—If the pursuer do not then table the cause, the defender or his agent, upon producing the service copy of the writ, may crave protestation for not insisting, which the sheriff may grant, and may modify the amount of protestation money payable to defender.

37. EXTRACT OF PROTESTATION.—Protestation shall not be extracted till the expiry of seven free days from the date of its granting, except where arrestments have been used, in which case extract may be given out after the lapse of forty-eight hours.

38. EFFECT OF PROTESTATION.—Upon protestation being extracted, the instance shall fall.

39. RECALL OF PROTESTATION.—Before extract protestation may be recalled, and the pursuer may be allowed to proceed with his action upon making payment to the defender of the amount of the protestation money, and upon such other conditions as to the sheriff shall seem just.

40. SHERIFF MAY DIRECT ANY CAUSE TO BE TRIED AS A SUMMARY CAUSE.—When any defended action (other than a claim under the Workmen's Compensation Act) has been tabled, the sheriff of consent of parties, notwithstanding that its value exceeds fifty pounds, may, at any stage, direct that it be tried as a summary cause, and his decision as to this shall be final.

41. PROCEDURE IN A SUMMARY CAUSE.—In a summary cause the sheriff may order defences if he thinks fit, or may make or certify a note upon the writ or separately of the [defender's] pleas and [may] appoint a diet for the trial of the cause, or may order such other procedure as the circumstances seem to him to require.

[42. IN NON-SUMMARY CAUSE DEFENCES WITHIN SIX DAYS OF TABLING.—In all other defended actions the defender shall at the tabling of the action, or within six days thereafter, lodge defences.]

[43. FORM OF DEFENCES.—Defences shall be in the form of articu-

late answers to the condescendence, and shall have appended a note of the defender's pleas in law, and where necessary, or where a counter claim is made, a separate statement of facts founded on by the defender which shall be set forth succinctly.]

[44. Every statement of fact made by one party shall be answered by the other party, and if a statement made by one party of a fact within the knowledge of the other party is not denied by that other party, the latter shall be held as admitting the fact so stated.]

[45. ENROLMENT FOR ADJUSTMENT.—Upon defences being lodged, the sheriff-clerk shall enrol the action for adjustment at an ordinary court held on a day occurring not less than four days thereafter. Such adjustment shall not be adjourned more than once except on special cause shown.]

[46. CERTIFIED COPY WRIT WARRANT FOR ARRESTMENT.—In every defended action the pursuer shall, after defences have been lodged, and before the diet for adjustment, lodge in process a copy of the initial writ and warrant thereon certified by him or his agent, which may thereafter be borrowed by the agent of any party to the process, and such certified copy shall be sufficient warrant where competent to arrest on the dependence. Separate precepts of arrestment may be issued by the sheriff-clerk upon production to him of a writ containing pecuniary conclusions upon which a warrant of citation has been granted, or of a liquid document of debt.]

47. DOCUMENTS FOUNDED ON TO BE PRODUCED BEFORE RECORD CLOSED.—Each party shall, along with his pleadings, or at latest before the closing of the record, if required by any other party in the action or by the sheriff, lodge any documents founded upon in the pleadings, so far as the same are within his custody or power.

48. DILIGENCE FOR RECOVERY OF SUCH DOCUMENTS.—Where such documents are not produced by either party, or where they are in the hands of third parties, the sheriff may, on the motion of either party, grant commission and diligence for their recovery, and may on that account delay closing the record.

49. REVISAL MAY BE ORDERED.—The sheriff may upon cause shown, or *ex proprio motu*, order a revisal of the pleadings, or may order pursuer to answer defender's separate statement of facts.

50. DOCUMENTS MAY BE CHALLENGED OPE EXCEPTIONE.—When a deed or writing is founded on by any party in a cause, all objections thereto may be stated and maintained by way of exception, without the necessity of bringing a reduction thereof. *✓*

51. CAUTION MAY BE ORDERED WHEN ACTION OF REDUCTION COMPETENT.—The sheriff may, where an objection is so stated and where an action of reduction would be competent, order the objector to find caution, or to make consignment as he shall direct.

52. CLOSING RECORD.—When the pleadings have been adjusted the sheriff shall close the record [and not later than six days thereafter the pursuer shall lodge in process a certified copy of the closed record].

53. ALTERATIONS TO BE INITIALED BY SHERIFF.—All alterations or additions made on the record shall be authenticated by the sheriff's initials.

54. PRELIMINARY PLEAS TO BE FIRST DISPOSED OF.—If preliminary pleas have been stated the sheriff shall first dispose of them, unless he thinks that from their being connected with the merits, or on any other ground, they should be reserved till a future stage of the cause.

55. COUNTER CLAIM MAY BE STATED IN DEFENCES.—Where a defender pleads a counter claim it shall suffice that he state the same in his

defences, and the sheriff may thereafter deal with it as if it had been stated in a substantive action, and may grant decree for it in whole or in part, or for the difference between it and the claim sued on.

56. FAILURE OF EITHER PARTY TO APPEAR OR TO IMPLEMENT ORDERS OF COURT ENTITLES OTHER PARTY TO DECREE.—In a defended action (including a jury cause) when any production or pleading has not been lodged or order implemented within the time required by statute or ordered by the sheriff or where in a defended action either party fails to appear by himself or his agent at any diet, or fails to make payment of any court dues or deposit, the sheriff may grant decree as craved, or of absolvitor, or may dismiss the action, with expenses, but the sheriff may upon cause shown prorogate the time for lodging any production or pleading or implementing any order. If all parties fail to appear the sheriff shall, unless sufficient reason appear to the contrary, dismiss the action.

57. AGENT FAILING TO RETURN PROCESS MAY BE FINED.—When an agent has borrowed a process, or any part thereof, and fails to return it for any diet at which it is required, the sheriff may impose upon such agent a fine not exceeding one pound, which shall be payable to the clerk of court for behoof of His Majesty's Exchequer, but an order so imposing a fine may, on cause shown, be recalled by the sheriff who granted it. Orders made under this section shall not be subject to review. For the purposes of this section every agent practising before his court shall be subject to the jurisdiction of the sheriff.

58. IF PROBATION RENOUNCED PARTIES TO SIGN MINUTE.—If at the time of closing the record the parties renounce probation, they shall sign a minute to that effect on the interlocutor sheet, and the sheriff may order the case to be debated then or at a subsequent diet.

59. PROOF MAY BE ORDERED.—If proof is necessary, the sheriff shall (unless the cause has been ordered for jury trial), with the least possible delay, fix a date for taking the proof, and may limit the mode of proof.

60. REMIT TO PERSON OF SKILL.—The sheriff may remit to any person of skill, or other person, to report on any matter of fact; and, when such remit is made of consent of both parties, the report of such person shall be final and conclusive with respect to the matter of the remit. When such a remit is made, upon the motion of either party, the expense attending its execution shall in the first instance be paid by the party moving for it. When the remit is on joint motion, or by the sheriff *ex proprio motu*, the expense shall in the first instance be paid by the parties equally, unless the sheriff shall otherwise order.

61. PARTIES MAY BY MINUTE AGREE TO CAUSE BEING TRIED AS SMALL DEBT CAUSE.—The parties to any action may lodge in process a minute, signed by themselves or their agents, agreeing to the cause being disposed of in the manner provided under the Small Debt Acts, whereupon the sheriff shall remit the action to his small debt court roll, and the whole powers and provisions of the Small Debt Acts shall become applicable to the cause.

62. DILIGENCE FOR RECOVERY OF DOCUMENTS.—At any time after a proof has been allowed, or an order made for jury trial, the sheriff, upon the motion of either party, may grant commission and diligence for the recovery of such documents as the sheriff shall deem relevant to the cause.

63. EVIDENCE TO LIE IN RETENTIS.—Evidence in danger of being lost may be taken to lie *in retentis*, and, if satisfied that it is desirable so to do, the sheriff may, upon the motion of either party at any time,

either take himself, or grant authority to a commissioner to take, such evidence.

64. REFERENCE TO OATH.—When any person desires to refer to the oath of his adversary, he shall lodge a minute to that effect, signed by himself or his agent. If the party to whose oath reference has been made fail to appear at the diet for taking his deposition, the sheriff may hold him as confessed, and decern accordingly.

65. RECORDING OF EVIDENCE.—Evidence in a cause or a deposition, whether before the sheriff or a commissioner, may be taken down by the sheriff or commissioner, or by a clerk or shorthand writer nominated by the sheriff or commissioner, to whom the oath *de fidei administratione* shall be administered, and evidence may be recorded in narrative form or by question and answer as the sheriff or commissioner shall direct, and the extended notes of evidence certified by such clerk or shorthand writer, shall be the notes of the oral evidence in the cause. The sheriff or commissioner may, if he think fit, dictate to the clerk or shorthand writer what he is to record.

66. SHERIFF MAY AMEND RECORD OF EVIDENCE.—If the correctness of the notes of evidence or of a deposition be questioned, the sheriff may satisfy himself in regard thereto by the examination of witnesses or otherwise, and may amend the record of evidence or a deposition.

67. SHORTHAND WRITER'S FEES.—When a shorthand writer is so employed to record evidence, he shall in the first instance be paid, as regards commissions by the party moving for the commission, and as regards proofs or jury trials by the parties equally. The agents of parties shall be personally liable for the shorthand writer's fees. And it shall be competent for the sheriff to make an order directing payment to be made.

68. PRODUCTION OF DOCUMENTS MAY BE ORDERED.—The sheriff may order production of documents at any stage of the cause, and the sheriff may allow a party at any time before judgment, to produce any document which he has failed to produce timeously, upon such conditions as to payment of expenses and allowing further proof as to the sheriff shall seem just.

69. PROOF TO BE TAKEN CONTINUOUSLY.—The proof shall be taken so far as possible continuously, but the sheriff may adjourn the diet from time to time.

70. EVIDENCE MAY BE TAKEN ON COMMISSION.—The evidence of any witness or haver resident beyond the jurisdiction of the court, or who although resident within the jurisdiction resides at some place remote from the seat of the court, or who is by reason of illness, age, or infirmity unable to attend the diet of proof, or a jury trial, may be taken by commission in like manner as evidence to lie *in retentis*.

71. CITATION OF WITNESSES.—A copy of an interlocutor certified by the sheriff-clerk allowing a proof or fixing a diet for the trial of any action or for the examination of witnesses or havers, or fixing a date for a jury trial, shall be sufficient warrant for citation of witnesses or havers. If any witness or haver duly cited on an *induciae* of at least forty-eight hours, and after having been tendered his travelling expenses, if the same shall have been demanded, fail to attend a diet, either before the sheriff or before his commissioner, such witness or haver may be ordained by the sheriff to forfeit and pay a penalty not exceeding forty shillings, unless a reasonable excuse be offered and sustained, and the sheriff may grant decree for said penalty in favour of the party on whose behalf said witness or haver was cited.

72. FORM OF CITATION.—Witnesses and havers may be cited as nearly as may be in Form F hereto annexed, and the execution of citation

shall be as nearly as may be in the Form G, and an agent who cites a witness shall be personally liable for the fees of the witness.

73. SECOND DILIGENCE AGAINST WITNESS FAILING TO ATTEND.—It shall further be competent to the sheriff to grant second diligence (which shall be effectual in any sheriffdom within Scotland without endorsement) for compelling the attendance of said witness or haver under pain of arrest and imprisonment, until caution be found as the sheriff may require for his due attendances, the expense whereof may in like manner be decerned for against the witness or haver.

74. OBJECTIONS TAKEN IN COURSE OF PROOF TO BE NOTED.—When the sheriff, or a commissioner, repels or sustains an objection taken in the course of a proof, the objection stated, and any answer made to it, shall, if desired by the objector, be shortly noted on the notes of evidence to the sheriff's or commissioner's dictation, but the examination of the witness shall nevertheless proceed. The sheriff or commissioner may, if he consider the objections of sufficient importance, direct the evidence objected to to be taken on a separate paper; but it shall not be competent during the course of a proof to submit to review any judgment pronounced upon the competency of the evidence.

75. APPEAL ON QUESTIONS OF ADMISSIBILITY OF EVIDENCE.—On the proof being declared closed, or within seven days thereafter, if the sheriff-substitute has not in the interval pronounced judgment, it shall be competent by leave of the sheriff-substitute to appeal to the sheriff upon objections to the admissibility of evidence taken during the course of the proof, and the sheriff shall, with or without a hearing, dispose of such appeal with the least possible delay, and, if he think that evidence accepted should not have been allowed, he may delete the same from the notes of evidence, and, if he think that evidence has been improperly rejected, he may appoint the same to be taken before the case is advised on its merits.

76. APPEAL ON GROUND OF CONFIDENTIALITY.—If any person, whether a party to the cause or other person, plead before the sheriff-substitute confidentiality with reference to documentary or oral evidence, or, on pleas of alleged hypothec or otherwise, shall object to produce documents, the sheriff-substitute shall, on the notes of evidence, minute his decision on such pleas, and any party in the cause or the party pleading [confidentiality] by leave of the sheriff-substitute may, in open court, take an appeal to the sheriff, who shall, with or without a hearing and with the least possible delay, dispose of such appeal.

77. PROOF TO PROCEED NOTWITHSTANDING SUCH APPEAL.—Such incidental appeal shall not remove the cause from the sheriff-substitute, who may proceed with the cause as regards points not necessarily dependent upon the ruling so appealed against.

78. PARTIES TO BE HEARD AT CLOSE OF PROOF.—At the close of the proof, or at an adjourned diet, if for any reason the sheriff shall see fit to postpone the hearing, the sheriff shall hear the parties or their agents, and thereafter shall pronounce judgment with the least possible delay.

AMENDMENT OF PLEADINGS

79. RECORD MAY BE AMENDED BY SHERIFF.—Upon the motion of either party the sheriff may, at any stage of the cause, and upon such conditions as to expenses, reserve or otherwise as he shall deem proper, allow a record to be altered or amended to the effect of determining the real question in controversy (including amendment of the instance and the initial writ and the adding of parties) notwithstanding

that the conclusions of the action may thereby be enlarged or altered.

80. EFFECT OF AMENDMENT.—No such amendment shall have the effect of validating diligence used prior thereto on the dependence of the action so as to prejudice the rights of creditors of the defender interested in defeating such diligence, but such amendment shall be operative to the effect of obviating objections to such diligence when stated by the defender himself, or by any person representing him by a title, or in right of a debt contracted by him subsequent to the execution of such diligence.

ABANDONMENT

81. ABANDONMENT OF ACTION.—A pursuer may at any stage of an action before an interlocutor granting absolvitor or dismissing the action has been pronounced offer to abandon his action by lodging a minute to that effect, signed by himself or his agent, in which case, upon payment to defender of his expenses, the sheriff may dismiss the action, and pursuer may bring a new action if otherwise competent. If the pursuer fails, within fourteen days of the date of taxation, to pay the defender's expenses, the defender shall be entitled to decree of absolvitor with expenses.

JUDGMENT

82. SHERIFF TO STATE REASONS FOR JUDGMENT.—To all interlocutors, except those of a formal nature, the sheriff shall append a note setting forth the grounds upon which he has proceeded and in his final judgment on the merits he shall set forth his findings in fact and in law separately.

83. DATE OF JUDGMENT TO BE DATE OF ENTRY IN COURT BOOKS.—The sheriff may pronounce or sign any judgment or interlocutor when furth of his sheriffdom, but the date of every interlocutor shall be deemed to be the date upon which it is entered in the books of the court.

84. CLERICAL ERROR IN JUDGMENT MAY BE CORRECTED.—At any time before extract, or before the transmission of a process in which an appeal has been taken the sheriff may correct any clerical or incidental error in his judgment.

EXTRACT

85. TIME OF EXTRACT.—Extract of any decree, interlocutor, or order of the sheriff (other than a decree in absence or a decree for expenses), if the same shall not have been sooner appealed against, may be issued in a summary cause after the lapse of seven days; and in any other cause, after the lapse of fourteen days from its date, or at such earlier date as the sheriff shall allow extract.

APPEAL

86. APPEAL FROM THE SHERIFF-SUBSTITUTE.—A final judgment of the sheriff-substitute may if appeal be competent and unless otherwise provided be appealed to the sheriff or to the Court of Session at any time within three months of its date (but not later), if the same shall not sooner have been extracted or implemented. Any other appealable interlocutor of the sheriff-substitute may be appealed within fourteen days (but not later), if not sooner extracted [provided that an interlocutor granting interim interdict may be appealed within fourteen days from the date of intimation thereof].

87. FORM OF APPEAL.—An appeal shall be taken by the appellant or his agent dating and signing a note on the interlocutor sheet in the following terms:—

The pursuer (or defender or other party) appeals (to the sheriff) or (to the Division of the Court of Session).

Or if the interlocutor sheet is not in the hands of the sheriff-clerk (which fact shall be certified by him), the note of appeal may be written upon a separate paper, and lodged along with the sheriff-clerk's said certificate.

88. ON APPEAL PROCESS TO GO TO SHERIFF OR CLERK OF SESSION.—

On an appeal being taken, the sheriff-clerk shall within two days transmit the process to the sheriff or to the principal clerk of session as the case may be, and also send written notice of the appeal to the other parties or their agents, but failure to give such notice shall not invalidate the appeal.

89. RECLAIMING NOTE OR ORAL HEARING MAY BE ORDERED.—The sheriff may order a reclaiming [petition] and answers, or may hear parties orally.

90. BUT MAY BE DISPENSED WITH.—The sheriff may, on the motion of both parties and if he see fit, dispose of the appeal without ordering either a reclaiming [petition] and answers or an oral hearing.

91. SHERIFF TO REGULATE INTERIM POSSESSION, ETC., PENDING APPEAL.—Notwithstanding an appeal, the sheriff shall have power to regulate all matters relating to interim possession, to make any order for the preservation of any property to which the action relates or for its sale if perishable, or for the preservation of evidence, or to make in his discretion any interim order which a due regard to the interests of the parties may require. Such orders shall not be subject to review except by the Appellate Court at the hearing of the appeal.

92. APPEAL TO COURT OF SESSION.—Within three months from its date (but not later) a final judgment of the sheriff, if not sooner extracted or implemented, may, if appeal be competent, be appealed to the Court of Session. Any other appealable judgment of the sheriff may, if not sooner extracted or implemented, be appealed within fourteen days (but not later).

93. FORM OF APPEAL.—The party desiring so to appeal, or his agent, shall do so by writing on the interlocutor sheet (or on a separate paper, in like manner as in the case of an appeal from the sheriff-substitute) a note in the following terms:—

The pursuer (or defender or other party) appeals to the Division of the Court of Session.

94. SHERIFF-CLERK TO TRANSMIT PROCESS TO EDINBURGH.—On receiving such note of appeal the sheriff-clerk shall within two days transmit the process to the principal clerk of session at Edinburgh, and shall also send written notice of the appeal to the other parties or their agents, but failure to give such notice shall not invalidate the appeal.

95. FORM OF APPEAL TO COURT OF SESSION IN ACTIONS ADVOCATED UNDER THIS ACT.¹—If any action is desired to be removed to the Court of Session in terms of sections five and thirty of this Act, the party so desiring its removal shall write a minute to that effect upon the interlocutor sheet, whereupon the sheriff-clerk shall give intimation to the other parties or their agents and shall transmit the process to the keeper of the roll of the Court of Session, who shall, under the direction of the Lord President, allocate the cause to a Division and a Lord Ordinary, and thereafter the cause shall proceed in all respects as if it had originally been raised in the Court of Session.

¹ See C.A.S., D, iv., 6, Appendix, p. 357.

96. ABANDONMENT OF APPEAL.—After an appeal has been noted, the appellant shall not be entitled to abandon it unless of consent of all parties, or by leave of the Appellate Court.

97. In sections 86, 87, 88, 89, 90, and 92 “sheriff” does not include sheriff-substitute.

EXPENSES

98. DECREE FOR EXPENSES TO INCLUDE DUES OF EXTRACT.—Every decree for expenses shall be deemed to include a decree for the expense of extracting the same, and extract of such decree for expenses may be issued after the lapse of seven days unless otherwise directed by the sheriff.

99. DECREE FOR EXPENSES MAY BE EXTRACTED IN AGENT’S NAME.—Expenses allowed in any action, whether in absence or *in foro*, shall, unless modified at a fixed amount, be taxed before decree is granted for them, and the sheriff may allow a decree for expenses to go out and be extracted in name of the agent who conducted the cause.

100. OBJECTION TO AUDITOR’S REPORT.—Within two days after the lodging of the auditor’s report on taxation it shall be competent to lodge a note of objections to an auditor’s report, and the sheriff shall dispose of such objections in a summary manner, with or without answers.

WAKENING

101. WAKENING ACTION.—If no interlocutor shall have been pronounced in a cause for a year and a day it shall be held to have fallen asleep.

102. TO BE BY MINUTE.—Where the whole of the parties or their agents subscribe a minute on the interlocutor sheet consenting to the cause being wakened the sheriff may pronounce an interlocutor wakening the cause, and thereafter proceed with it.

103. PUBLICATION OF APPLICATION FOR WAKENING.—Where all parties do not so consent, the party desiring to have the cause wakened may lodge a minute to that effect, which the sheriff may order to be intimated to the other parties or their agents, and to be published in such manner as the sheriff shall direct, and the agent for the party applying for wakening shall lodge a certificate that the intimation and publication ordered have been made. If satisfied, the sheriff may thereafter pronounce an interlocutor wakening the cause, and proceed with it.

SEQUESTRATION FOR RENT

104. IN SEQUESTRATION FOR RENT.—In actions for sequestration, and sale, for recovery, or in security of rent, whether brought after the term of payment or *currente termino*, payment of rent may be concluded for, and decree for payment of such rent or part thereof when the same has become due and payable, may be pronounced and be extracted in common form.

105. WARRANT MAY BE GRANTED TO INVENTORY AND SECURE.—In the first deliverance upon a writ for sequestration for rent the sheriff may sequestrate the effects of a tenant, and grant warrant to inventory and secure the same and all warrants to sequesterate, inventory, sell, eject, or relet shall be deemed to include authority, if need be, to open shut and lockfast places for the purpose of carrying such warrants into execution.

106. SEQUESTERED EFFECTS MAY BE SOLD.—The sheriff may order the sequestered effects to be sold at the sight of an officer of court or other person named.

107. SALE TO BE REPORTED WITHIN FOURTEEN DAYS.—When a sale follows, it shall be reported within fourteen days and pursuer shall lodge the roup rolls or certified copies thereof and a state of debt.

108. SHERIFF MAY DECERN FOR BALANCE DUE AFTER SALE.—In the interlocutor approving the report of sale, or by separate interlocutor, the sheriff may give decree against the defender for any balance remaining due.

109. SHERIFF MAY APPOINT CARETAKER OR ORDER CAUTION.—The sheriff may at any stage appoint a fit person to take charge of the sequestrated effects, or may require the tenant to find caution that they shall be made forthcoming.

REMOVINGS

110. ACTION OF REMOVING WHERE FIXED TERM OF REMOVAL.—An action of removing may be raised at any time, provided that the tenant has bound himself to remove by writing, dated and signed within twelve months of the term of removal, or, where there is more than one ish, of the ish first in date to remove. When the tenant has not so bound himself, an action of removing may be raised at any time provided that—

- (a) In the case of a lease of lands exceeding two acres in extent for three years and upwards, an interval of not less than one year nor more than two years shall elapse between the date of notice of removal and the term of removal first in date;
- (b) In the case of leases of lands exceeding two acres in extent, whether such leases be written or verbal held from year to year or under tacit relocation, or for any other period less than three years, an interval of not less than six months shall elapse between the date of notice of removal and the term of removal first in date; and
- (c) In the case of houses let with or without land attached not exceeding two acres in extent, as also of land not exceeding two acres in extent without houses, as also of mills, fishings, shootings, and all other heritable subjects excepting land exceeding two acres in extent, and let for a year or more, forty days at least shall elapse between the date of notice of removal and the term of removal first in date.

Provided that nothing herein contained shall affect section 27 of the Agricultural Holdings Act, 1883: Provided also that in any defended action of removing, the sheriff may order the defender to find caution for violent profits: Provided also that in actions of declarator of irritancy and removing by a superior against a vassal, the pursuer shall call as parties the last entered vassal and such heritable creditors and holders of postponed ground burdens as are disclosed by a search for twenty years prior to the raising of the action, and the expense of the search shall form part of pursuer's expenses of process.

111. FORM OF NOTICE OF REMOVAL.—Notices under sections 34, 35, and 36 of this Act shall be as nearly as may be in the Form H annexed hereto, and a letter of removal may be in the terms of Form I.

112. FORM OF NOTICE UNDER SECTION 37.—Notices under section 37 of this Act shall be as nearly as may be in the Form J hereto annexed, and such form may be used, *mutatis mutandis*, also for notices to the proprietor by or on behalf of the tenant.

113. REMOVAL NOTICES.—Removal notices under sections 34, 35, 36, 37, and 38 of the Act may be given by a messenger-at-arms or sheriff

officer, or by registered letter signed by the person entitled to give such notice, or by the law agent or factor of such person, posted at any post office within the United Kingdom in time to admit of its being delivered at the address thereon on or prior to the last date upon which by law such notice must be given, addressed to the person entitled to receive such notice, and bearing the particular address of such person at the time if the same be known, or, if the same be not known, then to the last known address of such person.

114. EVIDENCE OF NOTICE TO REMOVE.—A certificate of notice under rule 111, dated and endorsed upon the lease or extract, or upon the letter of removal, and signed by the sheriff officer, messenger-at-arms, or by the person giving the notice, or his law agent, or factor, or an acknowledgment of notice endorsed on the lease or extract or letter of removal by the party in possession or his agent shall be sufficient evidence that notice has been given. Where there is no lease, a certificate endorsed upon a copy of the notice or letter, certified to be correct, by the person, sheriff officer, messenger-at-arms, law agent, or factor sending the same, which certificate shall be signed by such party sending the notice or letter, shall also be sufficient evidence that notice has been given. A certificate of notice under rule 112, dated and endorsed upon a copy of the notice or letter signed by the party sending the notice, shall be sufficient evidence that such notice has been given.

SUMMARY REMOVINGS

115. FORM OF ACTION FOR SUMMARY REMOVING.—The action for summary removing as authorised by section 38 of this Act may be at the instance of a proprietor or his factor, or any other person by law authorised to pursue a process of removing, and be in the Form K hereto annexed.

116. FORM OF WARRANT.—The warrant to be granted thereon may be in the Form B hereto annexed upon two days' *induciae* and may be signed by the sheriff-clerk.

117. DECREE IN ABSENCE MAY BE RECALLED WITHIN THREE DAYS.—If the defender fail to appear, the sheriff may dispose of the cause in his absence, but, if within three days the defender shall satisfy the sheriff that there was reasonable excuse for his non-appearance, the sheriff may re-hear the cause, and, if decree has been granted and not implemented, may recall the decree upon such conditions as to expenses and otherwise as the sheriff shall deem reasonable. Where decree is pronounced in absence, the sheriff may give such directions as he may deem proper for the preservation of the defender's goods and effects.

118. SERVICE COPY WARRANT SUFFICIENT TO CITE WITNESSES.—The warrant upon the petition or complaint or the defender's service copy thereof shall be sufficient warrant for the citation of witnesses.

119. SMALL DEBTS PROCEDURE APPLIES TO SUMMARY REMOVING.—[Except as hereinafter provided, such action for summary removing] shall be conducted and disposed of in the summary manner in which proceedings are conducted under the Small Debt Acts and shall not be subject to review.

120. FORM OF DECREE.—When decree and warrant of ejection is granted it shall be in the Form L hereto annexed.

[121. In all such actions for summary removing where the defender has found caution for violent profits, or where such caution has been dispensed with, he shall be entitled to give in written answers.]

122. WHEN CAUTION FOUND PROCEDURE AS ORDINARY ACTION.—Where a defender has given in answers, and caution for violent profits has

been found or has been dispensed with, such causes shall, as nearly as may be thereafter, be conducted according to the procedure in ordinary actions of removing, and shall be subject to review in common form.

SUMMARY SUSPENSION

123. SUMMARY APPLICATION FOR SUSPENSION OF CHARGE MAY BE BROUGHT IN COURT OF DEFENDER'S DOMICILE.—Where a charge has been given on a decree of court granted by the sheriff or a decree of registration proceeding upon a bond, bill, contract, or other form of obligation registered in any sheriff court books, or in the books of council and session, or any others competent, or on letters of horning following on such decree, for payment of any sum of money not exceeding fifty pounds, exclusive of interest and expenses, the person so charged may apply in the sheriff court of his domicile for suspension on caution of such charge and diligence.

124. DILIGENCE MAY BE SISTED ON CAUTION.—On sufficient caution being found in the hands of the sheriff-clerk for the sum charged for interest and expenses, and a sum to be fixed by the sheriff in respect of expenses to be incurred in the suspension process, the sheriff may sist diligence, order intimation and answers, and proceed to dispose of the cause in a summary manner.

125. JUDGMENT OF SHERIFF FINAL ON COMPETENCY.—If objections be taken to the competency or regularity of suspension proceedings, the judgment of the sheriff-substitute, on such objections, may be appealed to the sheriff, but his judgment thereon shall be final.

ARRESTMENT

126. WHEN ARRESTMENT SCHEDULE NOT SERVED PERSONALLY COPY TO BE SENT BY POST.—If a schedule of arrestment has not been personally served upon an arrestee, it shall be necessary to make the arrestment effectual, that a copy of the schedule be also sent by postal registered letter to the last known place of abode of the arrestee, or, if such place of abode is unknown, or, if the arrestee is a firm or corporation to the arrestee's principal place of business if known, or, if not known, to any known place of business of the arrestee, and the officer shall in his execution certify that this has been done, and specify the said address.

[127. Arrestment to be Reported.—An arrestment on the dependence of an action used prior to service shall fall, unless the action shall have been served within twenty days from the date of execution of arrestment, and in the case of defended actions, tabled within twenty days of the first ordinary court day occurring subsequent to the expiry of the *induciae*, and in the case of undefended actions decree in absence be taken within twenty days of the expiry of the *induciae*; and when such an arrestment has been executed, the party using it or his agent shall forthwith report the execution to the sheriff-clerk.]

FURTHCOMING AND MULTIPLEPOINDING

128. FORUM OF ACTION OF MULTIPLEPOINDING.—An action of furthcoming or multiplepoinding may be raised in the sheriffdom where the fund or subject *in medio* is situated, or in that to whose jurisdiction the arrestee or the holder of the fund is subject although the common debtor may not reside within either sheriffdom.

129. REAL RAISER TO BE SET FORTH.—The party raising an action of

multiplepounding shall set forth in the initial writ who is the real raiser. The sheriff may, in an action of multiplepounding, allow the real raiser his expenses preferably out of the fund *in medio*; and, in an action of furthcoming, the expenses of bringing the action shall be deemed to be part of the arrestor's claim, which may be made good out of the arrested fund or subject.

130. CLAIMS TO BE ORDERED.—Where, in an action of multiplepounding, no defences are stated, and where defences are stated and repelled, the sheriff shall order claims and, if necessary, answers within a short space.

131. SEVERAL CLAIMANTS MAY STATE ONE PAPER.—Several claimants may state the facts on which they base their claims on the same paper, but, where necessary, they shall append separate claims and separate pleas in law.

132. WHEN COMPETING CLAIMS PROCEDURE AS IN ORDINARY ACTION.—Where there are defences in an action of furthcoming or competing claims in a multiplepounding process the procedure shall be as near as may be that in ordinary actions where defences have been lodged.

JURY TRIAL

133. JURY.—The jury shall consist of two special and five common jurors, who shall be chosen from a panel of five special and ten common jurors to be cited for the diet.

134. CITATION OF JURY.—The jury shall be cited by the sheriff-clerk from the sheriff court jury book in the manner prescribed by law or in use to be followed for the citation of jurors in Scotland; and all statutory or other regulations and customs relative to the citation, non-attendance, selection, and swearing of jurors shall (subject to rule 135) apply to jury trial in the sheriff court.

135. CHALLENGE OF JURORS.—Each party in the cause shall have right to challenge one special and one common juror, but not more; and in this matter, where there are more pursuers or defenders than one, they shall act collectively and not individually.

¹ 137. PRACTICE IN PROOFS TO APPLY.—The law and practice relating to the taking of evidence in proofs before the sheriffs shall apply to jury trials. Unless all the parties appearing put in a minute (which may be signed by their agents) dispensing with a record of the proceedings, the same shall be taken by an official shorthand writer of the court, but the notes need not be extended unless, in the case of an appeal, their production shall be ordered by the appellate court, in which event it shall be the duty of the appellant to procure the extended notes, certified by the shorthand writer, and to lodge the same with the principal clerk of session.

138. EVIDENCE ON COMMISSION.—When evidence has been taken to lie *in retentis*, if the sheriff is satisfied that the deponing witness is dead, or that he cannot attend at the trial owing to absence or infirmity or other sufficient cause, it shall be competent for the sheriff, on the motion of any party in the cause (irrespective of which party moved for the commission to take such evidence) to direct that the report of the commission be read to the jury, and when so read such report shall form part of the evidence in the cause; but depositions shall not be read or referred to if the deponing witness attends at the trial.

139. EXCEPTIONS.—Exceptions taken in the course of the trial to rulings of the sheriff in regard to admission or rejection of evidence, or in regard to points of law laid down in the course of the trial or

¹ Rule 136 repealed by Act of 1913.

in the sheriff's charge to the jury, shall, if required by the party taking the exception, be recorded to the sheriff's dictation upon the official shorthand notes before the jury proceed to consider their verdict.

¹ 141. CHARGE TO JURY.—If the sheriff deem it necessary to charge the jury, he shall do so immediately after, or as soon as practicable after, the conclusion of the speeches, or, if none be made, after the conclusion of the evidence.

142. PRODUCTIONS.—Documents or productions intended to be put in evidence or referred to at the trial shall be lodged with the clerk of court four days before the date fixed for the trial, but the sheriff may allow productions to be exhibited and produced at the trial if he is satisfied that they could not reasonably have been lodged earlier and that reasonable notice had been given to the other parties of intention to produce at the trial.

143. VERDICT BY MAJORITY.—The jury may return a verdict by a majority of its number at any time not less than one hour after the jury has been enclosed.

¹ 145. VERDICT TO BE RECORDED.—The verdict returned by the jury shall be recorded upon the interlocutor sheets, and signed by the clerk of the court, and this having been done, the jury shall be discharged.

146. AND FOLLOWED BY INTERLOCUTOR.—Any party in the cause may, so soon as the verdict has been so recorded or within fourteen days thereafter, move the sheriff to apply the verdict, and upon this motion the sheriff may hear parties and may make avizandum. As soon as practicable the sheriff shall issue an interlocutor applying the verdict and grant decree accordingly. In this interlocutor the sheriff shall also dispose of the question of expenses.

147. INTERLOCUTOR FINAL IF NO SHORTHAND NOTES.—Where no shorthand notes of the proceedings have been taken, the interlocutor applying the verdict shall not be subject to review.

148. GROUNDS OF APPEAL TO COURT OF SESSION.—If shorthand notes have been taken, it shall be competent for any party in the cause within fourteen days after the date of the final interlocutor of the sheriff applying the verdict (but not later) to appeal to a division of the Court of Session by lodging with the sheriff-clerk a note of appeal in the Form M annexed hereto.

149. TRANSMISSION OF PROCESS.—The sheriff-clerk shall, within three days of his receiving the note of appeal, notify the other parties in the cause, and transmit the process to the principal clerk of session at Edinburgh.

150. NEW TRIAL.—If the court shall order a new trial, the principal clerk of session shall re-transmit the process to the sheriff-clerk, and the sheriff shall as soon as practicable fix a date of new trial, which shall proceed as herein directed as regards the original trial.

CHARGE

[151. It shall be competent to charge any corporation or association, or any individual or individuals carrying on business under a firm or trading or descriptive name, under such name at the principal place where such business is carried on (including in the case of a corporation or association the place of business or office of their clerk or secretary), or where such principal place of business is furth of Scotland, at any place of business in Scotland at which such business is carried on.]●

¹ Rules 140 and 144 repealed by Act of 1913.

THE POOR'S ROLL

152. AGENTS TO MEET TO NOMINATE AGENTS FOR POOR.—The sheriff shall annually make an order appointing the agents enrolled in his court (or, where the [county] is divided into districts having separate local courts, the agents enrolled in the district courts) to meet to nominate a specified number of agents for the poor.

153. NOTICE OF MEETING ON COURT-HOUSE WALLS.—Notice of such order shall be given by a copy thereof being affixed on the walls of the court-houses and sheriff-clerk's offices in the [county or district].

154. NOMINATION TO BE REPORTED TO SHERIFF.—At said meeting the agents present shall, by a majority of votes, nominate the required number of agents, and cause the nominations to be reported to the sheriff.

155. SHERIFF MAY CONFIRM OR REFUSE.—The sheriff shall have power to confirm the nominations, in whole or in part, or to decline to do so.

156. NOTICE TO AGENTS.—Six days before the list is submitted to the sheriff, the sheriff-clerk shall notify each agent who has been nominated, and such agent may, before the nominations are confirmed, represent to the sheriff any reason why his nomination should not be confirmed.

157. IF AGENTS FAIL TO DO SO SHERIFFS MAY NOMINATE.—In the event of the agents failing to nominate as above provided for, or the sheriff not confirming the nomination, the sheriff may himself make the requisite nomination, or may appoint another meeting to be held.

158. AGENTS TO ACT FOR ONE YEAR.—The agents nominated shall act as agents for the poor in the [county], or the district in which they are appointed, for one year, but they shall be eligible for re-nomination.

159. AGENTS TO ACT AS DIRECTED BY SHERIFF.—The agents so nominated shall as they themselves arrange, or as the sheriff shall direct, act as procurators for the poor in all causes, civil and criminal, including attendance at the circuit court.

160. AGENTS TO ASSIST EACH OTHER.—The agents for the poor, in their respective districts, shall assist each other by taking precognitions, or proofs on commission, or otherwise as may be requisite and reasonable.

161. In sections 152 to 157 "sheriff" does not include sheriff-substitute.

162. APPLICANT TO PRODUCE CERTIFICATE OF POVERTY.—Along with his application for the benefit of the poor's roll, the applicant shall produce a certificate signed by the inspector or an assistant inspector of poor of the parish or district where the applicant resides, bearing that the applicant is unable, through poverty, to pay for the conduct of legal proceedings.

163. APPLICATION TO BE REMITTED TO PROCURATORS FOR POOR.—The sheriff shall remit the application to the procurators for the poor who shall notify the parties, and after inquiry shall make a report to the sheriff.

164. IF THEY REPORT APPLICANT ENTITLED, SHERIFF TO APPOINT AN AGENT TO CONDUCT CAUSE.—If they report that the applicant has a probable cause of action and is entitled to the benefit of the poor's roll, the sheriff shall appoint one of the agents to take charge of the applicant's case.

165. AGENT TO CONCLUDE CAUSE.—Such agent shall conduct the cause to its final issue, notwithstanding that during its progress he may have ceased to be an agent for the poor.

166. AGENT TO HAVE NO CLAIM FOR FEES UNLESS RECOVERED FROM OTHER PARTY.—Unless expenses shall be awarded against and recovered from the opposite party the agent shall have no claim for fees; but the litigant shall be liable to him for actual outlays incurred with the litigant's sanction.

167. AGENT NOT LIABLE FOR FEES.—The agent shall not be liable for witnesses' fees, shorthand writer's fees, or court dues unless they are recovered by the agent personally.

168. AGENT NOT LIABLE FOR COURT DUES.—Neither the agent nor the litigant shall be liable for dues of court or officer's fees, unless these are awarded against and recovered from the opposite party, in which case the litigant (or the agent, if he personally recovers the same) shall be liable.

169. SHERIFF MAY REMOVE LITIGANT FROM POOR'S ROLL.—It shall be in the power of the sheriff at any time to deprive any litigant of the benefit of the poor's roll.

[FORM A

SHERIFFDOM OF

AT

A. B. (design him; if he sues in any special character set that forth; also where necessary set forth relationship to defender, e.g. wife, creditor, etc.), Pursuer.

Against

C. D. (design him; if sued in any special character set that forth, e.g. as trustee, vitious intromitter, etc.), Defender.

The pursuer craves the Court (here set forth the specific decree, warrant, or order asked).

(To be signed) A. B., Pursuer;

or

*X. Y. (add designation and business address),
Pursuer's Agent.*

CONDESCENDENCE

(State articulately the facts which form the ground of action.)

PLEAS IN LAW

(State them articulately.)]

FORM B

(Place and date.) Grants warrant to cite the defender *(or respondent)* by serving a copy of the writ and warrant upon an *induciæ* of _____, and appoints him to answer within the sheriff court house at _____ *(in Room No. _____, or in Chambers, or as the case may be),* on _____ the _____ day of _____ at _____ o'clock _____ noon, under certification of being held as confessed. *(When necessary add (meantime sequestrates and grants warrant to inventory and secure); or (grants warrant to arrest on the dependence) or (otherwise as the case may be).)*

FORM C

(Place and date.) Grants warrant to cite the defender by serving a copy of the writ and warrant upon an *induciæ* of _____ days,

and appoints him, if he intend to defend, to lodge a notice of appearance with the sheriff-clerk at _____ within the *induciæ*, under certification of being held as confessed. (*Meantime grants interim interdict, or warrant to arrest on the dependence, or sequestrates and grants warrant to inventory; or otherwise, as the case may be.*)

FORM D

(*Place and date, and, if necessary, hour.*) C. D., defender. You are hereby served with the foregoing (*or within-written*) writ and warrant, and required to answer thereto, conform to the said warrant. (*If posted and if necessary add (the induciæ is reckoned from twenty-four hours after date of posting).*)

(*To be signed*) P. Q., Sheriff Officer,

^{or}
X. P. (*add designation and business address*),
Pursuer's Agent.

FORM E

(*Place and date.*) I, _____, do hereby certify that upon the
day of _____ (*if necessary, add between the hours of*
and _____) I duly cited C. D., the defender (*or*
respondent), to answer to the foregoing (*or within-written*) writ. This
I did by (*set forth mode of service; if by officer and not by post, add*
in presence of L. M. (design him)), witness, hereto with me subscribing.

(*To be signed*) P. Q., Sheriff Officer;

L. M., Witness;

^{or}
X. Y. (*add designation and business address*),
Pursuer's Agent.

FORM F

K. L. (*design him*), you are hereby required to attend at the Sheriff Court House at (*street address*) (*if necessary, add within Court Room, No. _____, or in Chambers*), on _____, the _____ day of _____, at _____ o'clock _____ noon, to give evidence for pursuer (*or appellant or complainer*) (*or defender or respondent*) in the action A. B. (*design him*), pursuer, against C. D. (*design him*), and (*if necessary*) you are required to bring with you (*specify documents*) under penalty of forty shillings if you fail to attend.

Dated this _____ day of _____ (*if necessary add between the hours of _____ and _____ noon*).

(*Signed*) P. Q., Sheriff Officer;

^{or}
X. Y. (*add designation and business address*),
Pursuer's (*or defender's or appellant's or respondent's*) Agent.

FORM G

(*Place and date.*) I, _____, do hereby certify that upon the

day of (if necessary, add between the hours of
and noon), I duly cited K. L. (design him), to
attend at o'clock noon, within to give
evidence for the in the action A. B. (design him) against
C. D. (design him), and I also required him to bring with him (specify
documents). This I did by (set forth mode of citation).

(Signed) P. Q., Sheriff Officer;

or
X. Y. (add designation and business address),
Pursuer's (or defender's or appellant's or respondent's) Agent.

FORM H

To (name, designation and address of party in possession).

You are required to remove from (describe subjects) at the term of
(or if different terms, state them and the subjects to which
they apply), in terms of lease (describe it) or (in terms of your letter
of removal of date) or (otherwise as case may be).

FORM I

To (name and designation of addressee).

(Place and date.) I am to remove from (state subjects by usual
name or short description sufficient for identification) at the term
of

K. L. (add designation and address).

If not holograph to be attested thus—

M. N. (add designation and address), witness.

FORM J

(Place and date.)

You are required to remove from () that portion of
ground (describe it); or the mill of (describe it); or the shootings of
the lands and estate of (describe them); or (other subjects to which this
notice is applicable), at the term of Whitsunday (insert year) (or
Martinmas, as the case may be, inserting after the year the words,
being the 15th day of May, or the 11th day of November, or the 28th
day of May, or the 28th day of November, as the case may be).

To K. L. (designation and address).

FORM K

In the Sheriff Court of

at
A. B. (design him), pursuer, complains that he (or his author, as the
case may be), let to C. D. (design him), defender (or his author, as the
case may be), a dwelling-house, garden, and pertinents (or other
subjects, as the case may be), situated at for the period
from to , and that the defender refuses or delays
to remove therefrom, although his term of occupancy has expired, and
it is necessary to obtain warrant for his ejection; therefore decree

ought to be granted for removing and ejecting the defender, his family, sub-tenants, cottars, and dependants, with their goods and gear, furth and from the said subjects (*here insert date at which removal or ejection is sought*), that the pursuer or others in his right may then enter to and possess the same. (*If expenses are sought add, "and the defender ought to be found liable in the expenses of process and dues of extract."*)

(*Signature of pursuer or his agent.*)

FORM L

At the day of the sheriff (*in absence of defender, or having heard parties, as the case may be*) grants warrant for ejecting the said C. D., defender, and others mentioned in the complaint from the subjects therein specified, such ejection not being sooner than (*here insert time appointed for ejection, and whether after a charge on such induciæ as may be deemed proper or instantly*): Finds the defender liable in of expenses (*or otherwise, as the case may be*), and decerns.

(*Signature of sheriff.*)

[FORM M

At the jury trial in the action at the instance of A. B. (*design him*), pursuer, against C. D. (*design him*), defender, held at , on the day of , before , sheriff of .

The verdict of the jury was (*here quote the recorded verdict setting forth where the sheriff has proponed to the jury a question or questions of fact, such question or questions, and the answer or answers thereto returned by the jury*).

The interlocutor of the sheriff applying the verdict was pronounced on and was in these terms:—

(*Here quote the interlocutor.*)

The (*state party appealing*) appeals to the Division of the Court of Session upon the ground (*here state the grounds conform to section 31 of the Act*).

- (a) That in the interlocutor complained of the verdict was erroneously applied.
- (b) That the verdict of the jury was contrary to evidence in respect (*here set forth clearly and succinctly the particulars in which it is alleged the evidence led and the verdict returned are inconsistent*).
- (c) That evidence was unduly admitted (*or rejected*) in regard to (*here set forth shortly the fact in regard to which the evidence was admitted or rejected*).
- (d) That the sheriff misdirected the jury in regard to (*here state shortly the point of law alleged to be misdirection*).
- (e) That the damages awarded by the jury were excessive.

M. P., pursuer (*or other party*),

or

X. Y. (*signature and business address*),
Agent for the .]

SECOND SCHEDULE (s. 52).

Session and Chapter.	Short Title.	Extent of Repeal.
20 Geo. II. c. 43.	The Heritable Jurisdictions (Scotland) Act, 1746.	Section 29.
21 Geo. II. c. 19.	The Sheriffs (Scotland) Act, 1747.	Sections 10 and 11.
28 Geo. II. c. 7.	The Sheriffs (Scotland) Act, 1755.	The whole Act.
50 Geo. III. c. 112.	The Court of Session Act, 1810.	Sections 36, 37, 38, and 40, so far as these sections relate to Sheriff Court.
6 Geo. IV. c. 23.	The Sheriff Courts (Scotland) Act, 1825.	Sections 1, 3, 4, 5, and 8, so far as these sections relate to civil causes in the Sheriff Court, and section 10.
6 Geo. IV. c. 120.	The Court of Session Act, 1825.	Section 40, so far as relating to appeal for jury trial from Sheriff Court to Court of Session.
9 Geo. IV. c. 29.	The Circuit Courts (Scotland) Act, 1828.	Section 22.
11 Geo. IV. & 1 W. IV. c. 69.	The Court of Session Act, 1830.	Sections 22, 23, 24, and 32, as also in section 33, the words "and all actions of separation <i>a mensa et thoro</i> ."
2 & 3 W. IV. c. 65.	The Representation of the People (Scotland) Act, 1832.	Section 36, so far as relating to sheriff and sheriff-substitute.
1 & 2 Vict. c. 114.	The Debtors (Scotland) Act, 1838.	Section 19.
1 & 2 Vict. c. 119.	The Sheriff Courts (Scotland) Act, 1838.	The whole Act, except sections 25, 27, and 28, and section 31, so far as that section relates to courts other than Sheriff Courts.
16 & 17 Vict. c. 80.	The Sheriff Courts (Scotland) Act, 1853.	The whole Act, except section 34.

Session and Chapter.	Short Title.	Extent of Repeal.
27 & 28 Vict. c. 106.	The Sheriffs-Substitute Act, 1864.	The whole Act.
30 & 31 Vict. c. 96.	The Debts Recovery (Scotland) Act, 1867.	The whole Act.
31 & 32 Vict. c. 100.	The Court of Session Act, 1868.	Sections 65, 66, 67, 68, 69, 70, 73, and 79, so far as those sections relate to appeals from Sheriff Courts.
33 & 34 Vict. c. 86.	The Sheriff Courts (Scotland) Act, 1870.	Sections 13 and 14.
38 & 39 Vict. c. 81.	The Sheriffs - Substitute (Scotland) Act, 1875.	Sections 1 and 2.
39 & 40 Vict. c. 70.	The Sheriff Courts (Scotland) Act, 1876.	Sections 4 to 25, both inclusive. Sections 27 to 34, both inclusive. Sections 46 to 52, both inclusive. Section 54, except in so far as it relates to commissary regulations. All the schedules.
40 & 41 Vict. c. 50.	The Sheriff Courts (Scotland) Act, 1877.	The whole Act.
52 & 53 Vict. c. 26.	The Small Debt Amendment (Scotland) Act, 1889.	Section 8.
61 & 62 Vict. c. 8.	The Sheriffs Tenure of Office (Scotland) Act, 1898.	The whole Act.

II. THE SHERIFF COURTS (SCOTLAND) ACT, 1913

AN ACT TO AMEND THE SHERIFF COURTS (SCOTLAND) ACT, 1907 [2 & 3 GEO. V. CH. 28.—7TH MARCH 1913.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. REPEAL OF CERTAIN SECTIONS OF THE PRINCIPAL ACT.—Section nine, section twenty-eight, and section thirty-two of the Sheriff Courts (Scotland) Act, 1907 (7 Edw. VII. c. 51) (hereinafter referred to as the principal Act), are hereby repealed.

2. APPEAL TO COURT OF SESSION.—In lieu of section twenty-eight there shall be inserted in the principal Act the following section :—

“28.—(1) Subject to the provisions of this Act, it shall be competent to appeal to the Court of Session against a judgment either of a sheriff or of a sheriff-substitute if the interlocutor appealed against is a final judgment or is an interlocutor—

“(a) Granting interim decree for payment of money other than a decree for expenses; or

“(b) Sisting and action; or

“(c) Refusing a reponing note; or

“(d) Against which the sheriff or sheriff-substitute either *ex proprio motu* or on the motion of any party, grants leave to appeal :

“Provided that no appeal shall be competent where the cause does not exceed fifty pounds in value exclusive of interest and expenses or is being tried as a summary cause unless the sheriff, after final judgment by him on an appeal on the motion of either party made within seven days of the date of the final interlocutor certifies the cause as suitable for appeal to the Court of Session :

“(2) Nothing in this section nor in section twenty-seven of this Act contained shall affect any right of appeal or exclusion of such right provided by any Act of Parliament in force for the time being.”

3. AMENDMENT OF THE PRINCIPAL ACT.—The principal Act shall be amended to the extent and effect shown in the First Schedule to this Act.

4. AMENDMENT OF THE FIRST SCHEDULE TO THE PRINCIPAL

ACT.—The First Schedule to the principal Act shall be amended to the extent and effect shown in the Second Schedule to this Act.

5. SAVING FOR PENDING ACTIONS.—Nothing in this Act contained shall apply to any action pending in any sheriff court at the commencement of this Act.

6. PROCEDURE AT JURY TRIALS.—Where a jury trial has been ordered, the sheriff shall issue an interlocutor fixing a time and place for the trial, being not sooner than fourteen days from the date of his interlocutor, and at the trial he may, or if required by either party, shall, after the conclusion of the evidence, propound to the jury question or questions of fact to be answered by them, and the jury shall, in their verdict, give specific answers to such question or questions.

7. SHORT TITLE AND CITATION.—This Act shall come into operation on the first day of May one thousand nine hundred and thirteen, and may be cited as the Sheriff Courts (Scotland) Act, 1913; and the principal Act and this Act may be cited together as the Sheriff Courts (Scotland) Acts, 1907 and 1913, and shall be read and construed together as one Act.

SCHEDULES

FIRST SCHEDULE

[SECTION 3]

Session and Chapter.	Short Title.	Extent of Amendment.
7 Edw. VII. c. 51.	The Sheriff Courts (Scotland) Act, 1907.	Section three, after the word "action" occurring in subhead (d), insert the words "or cause"; omit subhead (i), and in lieu thereof insert "Summary cause includes actions (other than actions brought and conducted in the small debt court and claims under the Workmen's Compensation Act) for payment of money not exceeding fifty pounds in amount, exclusive of interest and expenses, and all actions in which either the parties admit that the value of the action, exclusive of interest and expenses, does not exceed

Session and Chapter.	Short Title.	Extent of Amendment.
7 Edw. VII. c. 51— <i>con.</i>	The Sheriff Courts (Scotland) Act, 1907— <i>con.</i>	fifty pounds or which they consent at any stage shall be tried summarily," and at the end of the section insert— "(g) 'Employee' includes the legal personal representative of an employee, and any person who, by the law of Scotland, may be entitled to solatium in respect of the death of an employee." Section five, omit subsection (2), and in lieu thereof insert— "(2) Actions of aliment, provided that as between husband and wife they are actions of separation and aliment, adherence and aliment, or interim aliment, and actions for regulating the custody of children." In the same section and in the last proviso thereof, omit the words from "action" to the end of the section, and in lieu thereof insert "mentioned in the second subsection of this section." Section six (a), after the word "defenders" insert the words "over each of whom a sheriff court has jurisdiction in terms of this Act"; omit the words "immediately prior to the raising of the action"; omit the words "and whose present residence in Scotland is unknown," and insert "and" has no known residence in Scotland." Section six (b), omit "sheriffdom," and insert "jurisdiction." Section seven, omit the first proviso and the word "also." Section eight, after the word "party," insert "made before the examination of witnesses is begun"; omit the last sentence. Section twenty-one, leave out "for the county or burgh, respectively, in which he shall be sheriff or salaried sheriff-substitute," and insert "occurring within his jurisdiction." Section twenty-seven, after "(E)" insert "refusing a reponing note; or (F)," and at the end of the section insert the words, "It shall be competent for the sheriff, when the action is before him on appeal on any point, to open the record <i>ex proprio motu</i>, if the record shall appear to him not to have

Session and Chapter.	Short Title.	Extent of Amendment.
7 Edw. VII. c. 51— <i>con.</i>	The Sheriff Courts (Scotland) Act, 1907— <i>con.</i>	been properly made up, or to allow further proof." Section thirty, after "1880," where first occurring, insert "or at common law." Section thirty-one, after "1880," insert "or at common law." In the same section omit the words "under head (1)," and also the words "under the other heads before mentioned." Section forty, omit the first proviso and the word "also."

SECOND SCHEDULE

[SECTION 4]

Session and Chapter.	Short Title.	Extent of Amendment.
7 Edw. VII. c. 51.	The Sheriff Courts (Scotland) Act, 1907.	First Schedule, omit Rule 2, and in lieu thereof insert— "2. There shall be annexed to the initial writ a statement (in the form of an articulate condescendence) of the facts which form the ground of action, and a note of the pursuer's pleas in law, which condescendence and note of pleas in law shall be held to constitute part of the initial writ." Omit Rule 11, and in lieu thereof insert— "11. Any individual or individuals, or any corporation or association, carrying on business under a firm or trading or descriptive name may sue or be sued in such name without the addition of the name or names of such individual or individuals or any of them, or of any member or official of such corporation or association, and any extract of a decree pronounced in the Sheriff Court, or of a decree proceeding upon any deed, decree arbitral, bond, protest of a bill, promissory note or banker's note, or upon any other obligation or document on which execution may competently proceed,

Session and Chapter.	Short Title.	Extent of Amendment.
7 Edw. VII. c. 51— <i>con.</i>	The Sheriff Courts (Scotland) Act, 1907— <i>con.</i>	recorded in the Sheriff Court books against such individual or individuals, or against such corporation or association, under such firm, trading, or descriptive name, shall be a valid warrant for diligence against such corporation, association, or firm, and such individual or individuals. Citation in any action may be made at the principal place where such business is carried on (including the place of business or office of the clerk or secretary of any corporation or association) when such place is within the jurisdiction of the Sheriff Court in which such action is brought or otherwise at any place of business or office at which such business is carried on within the jurisdiction of such Sheriff Court." 16. At end, insert "All remedies (including caption) competent to enforce the return of a borrowed process may proceed on the warrant of the court from whose custody the process was obtained, and that whether the borrower is or is not resident within its jurisdiction." 22. Omit "lodge with the sheriff-clerk," and insert "exhibit to the sheriff-clerk the service copy of the writ and lodge with him." Omit Rule 23, and in lieu thereof insert— "23. If the defender does not lodge a notice of appearance, or does not answer, the sheriff may, at any time after the expiry of the <i>inducia</i>, upon a written craving being endorsed on the initial writ by the pursuer or his agent, decern in terms of the crave of the initial writ, and, at the same time or thereafter, for expenses as the same may be certified by a note endorsed upon the initial writ by the auditor of court subject to any restriction so endorsed or set forth in a minute by the pursuer or his agent: Provided that this rule shall not apply to actions of separation and aliment, adherence and aliment, or interim aliment, or to actions regulating the custody of children."

Session and Chapter.	Short Title.	Extent of Amendment.
7 Edw. VII. c. 51— <i>con.</i>	The Sheriff Courts (Scotland) Act, 1907— <i>con.</i>	33. Omit the words "upon a reponing note or." Omit Rule 41, and in lieu thereof insert— "41. In a summary cause the sheriff may order defences if he thinks fit or may make or certify a note upon the writ or separately of the defender's pleas, and may appoint a diet for the trial of the cause, or may order such other procedure as the circumstances seem to him to require." Omit Rules 42 to 46 inclusive, and in lieu thereof insert— "42. In all other defended actions the defender shall, at the tabling of the action or within six days thereafter, lodge defences." "43. Defences shall be in the form of articulate answers to the condescendence and shall have appended a note of the defender's pleas in law and, where necessary, or where a counter-claim is made, a separate statement of facts founded on by the defender which shall be set forth succinctly." "44. Every statement of fact made by one party shall be answered by the other party, and, if a statement made by one party of a fact within the knowledge of the other party is not denied by that other party, the latter shall be held as admitting the fact so stated." "45. Upon defences being lodged, the sheriff-clerk shall enrol the action for adjustment at an ordinary court held on a day occurring not less than four days thereafter. Such adjustment shall not be adjourned more than once except on special cause shown." "46. In every defended action the pursuer shall, after defences have been lodged, and before the diet for adjustment, lodge in process a copy of the initial writ and warrant thereon, certified by him or his agent, which may thereafter be borrowed by the agent of any party to the process, and such certified copy shall be sufficient warrant where competent to arrest on the dependence. Separate precepts

Session and Chapter.	Short Title.	Extent of Amendment.
7 Edw. VII. c. 51— <i>con.</i>	The Sheriff Courts (Scotland) Act, 1907— <i>con.</i>	of arrestment may be issued by the sheriff-clerk upon production to him of a writ containing pecuniary conclusions upon which a warrant of citation has been granted, or of a liquid document of debt.” Omit Rule 52, and in lieu thereof insert— “52. When the pleadings have been adjusted the sheriff shall close the record; and not later than six days thereafter the pursuer shall lodge in process a certified copy of the closed record.” 76. Omit “confidentially” and insert “confidentiality.” 86. At end of rule, insert “provided that an interlocutor granting interim interdict may be appealed within fourteen days from the date of intimation thereof.” 89, 90. Omit “reclaiming note” and insert “reclaiming petition.” Omit Rule 119, and in lieu thereof insert— “119. Except as hereinafter provided, such action for summary removing shall be conducted and disposed of in the summary manner in which proceedings are conducted under the Small Debt Acts, and shall not be subject to review.” Omit Rule 121, and in lieu thereof insert— “121. In all such actions for summary removing where the defender has found caution for violent profits or where such caution has been dispensed with, he shall be entitled to give in written answers.” Omit Rule 127, and in lieu thereof insert— “127. An arrestment on the dependence of an action used prior to service shall fall unless the action shall have been served within twenty days from the date of execution of arrestment; and in the case of defended actions tabled within twenty days of the first ordinary court day, occurring subsequent to the expiry of the <i>induciae</i>, and in the case of undefended actions

Session and Chapter.	Short Title.	Extent of Amendment.
7 Edw. VII. c. 51— <i>con.</i>	The Sheriff Courts (Scotland) Act, 1907— <i>con.</i>	Condescendence. <i>[State articulately the facts which form the ground of action.]</i> Pleas in law. <i>[State them articulately.]</i>” Omit Form M, and in lieu thereof insert— “FORM M. At the jury trial in the action at the instance of <i>A. B.</i> <i>[design him]</i>, pursuer, against <i>C. D.</i> <i>[design him]</i>, defender, held at _____, on the _____ day of _____, before _____, sheriff of _____. The verdict of the jury was <i>[here quote the recorded verdict setting forth, where the sheriff has proponed to the jury a question or questions of fact, such question or questions and the answer or answers thereto returned by the jury].</i> The interlocutor of the sheriff applying the verdict was pronounced on _____, and was in these terms:— <i>[Here quote the interlocutor.]</i> The <i>[state party appealing]</i> appeals to the _____ Division of the Court of Session upon the ground <i>[here state the grounds conform to section 31 of the Act].</i> (a) That in the interlocutor complained of the verdict was erroneously applied. (b) That the verdict of the jury was contrary to evidence in respect <i>[here set forth clearly and succinctly the particulars in which it is alleged the evidence led and the verdict returned are inconsistent].</i> (c) That evidence was unduly admitted <i>[or rejected]</i> in regard to <i>[here set forth shortly the fact in regard to which the evidence was admitted or rejected].</i> (d) That the sheriff misdirected the jury in regard to <i>[here state shortly the point of law alleged to be misdirection].</i>

Session and Chapter.	Short Title.	Extent of Amendment.
7 Edw. VII. c. 51— <i>con.</i>	The Sheriff Courts (Scotland) Act, 1907— <i>con.</i>	(c) That the damages awarded by the jury were excessive. <i>M. P.</i> , pursuer [<i>or other</i> <i>party</i>], or <i>X. Y.</i> [<i>signature and</i> <i>business address</i>], Agent for the ."

III. CODIFYING ACT OF SEDERUNT, 1913, WITH
EXCERPTS FROM SCHEDULE THERETO RELAT-
ING TO PROCEEDINGS IN THE SHERIFF COURT
AND APPEALS TO THE COURT OF SESSION

CODIFYING ACT OF SEDERUNT, 1913

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ACT OF SEDERUNT TO CONSOLIDATE AND AMEND THE ACTS OF SEDERUNT

EDINBURGH, *4th June 1913.*

The Lords of Council and Session, considering that it is expedient to consolidate and amend the Acts of Sederunt, do hereby Enact and Declare as follows in the Schedule attached hereto: And they Enact and Declare that all Acts of Sederunt inconsistent with the Act now passed shall be and the same are hereby repealed: Provided always that nothing herein contained or enacted shall be held to derogate from the force of such Acts of Sederunt as have, in terms of the respective Acts of Parliament under which they are passed, lain upon the table of Parliament for the prescribed period without resolution of either House of Parliament being passed against the same; which said Acts of Sederunt shall continue in full force notwithstanding that their provisions are re-enacted in this Act.

And the Lords Appoint this Act to be inserted in the Books of Sederunt, and to be published in the usual manner.

(Signed) DUNEDIN, *I.P.D.*

[*The present Act of Sederunt shall be known as the "Codifying Act of Sederunt," and shall be cited by the letters "C.A.S." and the appropriate Book, Chapter, and section; e.g. C.A.S., F, i., 6.*]

SCHEDULE

BOOK A.—THE COURT, ITS OFFICERS AND RECORDS

CHAPTER III.—THE RECORDS

3. *Printing—Type and Marginal Letters*

All papers printed for the use of the Court shall be printed in type not smaller than that known as "English," and shall have alphabetical reference letters printed on the outer margin.

5. *Distinctive Letter on Separate Prints*

A distinctive letter of the alphabet (A, B, C, etc.) shall be printed in large heavy type on the front page, and on the backing of every print boxed to the Court, so that in each process the letters thus printed shall follow consecutively. Any print without such lettering shall not be received by the boxing clerks.

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BOOK B.—RULES APPLICABLE IN ALL THE COURTS

CHAPTER I.—AMENDMENT OF RECORD

Note.—The following provisions of Book B., Chap. I., are applicable to practice in the Court of Session. They are printed here merely for comparison with the rules in force in the Sheriff Court. See p. 126.

In lieu of the first proviso in section 29 of the Court of Session Act, 1868, the following provisions shall have effect in addition to the provision as to amendment of records in defended actions contained in said section 29; but always subject to the provision at the end of said section as to the effect of amendments invalidating diligence:—

1. *Sisting New Pursuer*

Where an action or other proceeding has been commenced in the name of the wrong person as pursuer, or where it has been commenced without a person whose conjunction may be deemed necessary to make a good instance, or where it is doubtful whether it has been commenced in the name of the right person, the Court or Lord Ordinary, if satisfied that it has been so commenced through *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may allow any other person to be sisted as pursuer in substitution for, or in addition to, the original party, on such terms as to expenses as to the Court or Lord Ordinary shall seem proper.

2. *Party Suing or Sued in Wrong Capacity*

Where a party sues or is sued in a representative character, but it appears that he ought to have sued or been sued in his own right, the Court or Lord Ordinary may, at the instance of either party, on such terms as to expenses as to the Court or Lord Ordinary shall seem proper, amend the record accordingly; and

thereupon the action shall proceed in all respects as if the proper description of the party had been given in the summons or other writ.

3. *Representative Capacity*

Where a party sues or is sued in his own right, but it appears that he ought to have sued or been sued in a representative character, the Court or Lord Ordinary may, at the instance of either party, on such terms as to expenses as to the Court or Lord Ordinary shall seem proper, amend the record accordingly; and thereupon the action shall proceed in all respects as if the proper description of the party had been given in the summons or other writ.

4. *Insufficient or Incorrect Designation*

Where the name or description of a pursuer or defender in the summons or other writ is insufficient or incorrect, it may be amended at the instance of either party, by order of the Court or Lord Ordinary, on such terms as to expenses as to the Court or Lord Ordinary shall seem proper; and thereupon the action shall proceed in all respects as if the name or description had been originally such as it appears after the amendment has been made; but if no objection is taken to the name or description the action may proceed, and in the judgment and all subsequent proceedings founded thereon the party may be named and described in the same manner as in the summons or other writ.

5. *Procedure in Lieu of Supplementary Action*

Where in the course of an action it appears that all the parties who have an interest have not been called, it shall not be necessary for the pursuer to bring a supplementary or additional action as heretofore (*sic*), but it shall be competent for the Court or Lord Ordinary to allow the record to be amended by inserting in the summons or other writ the name of such additional defender, and to have the record as amended served on him, along with a notice in the form contained in the appendix hereto specifying the day upon which he must lodge defences or answers as the case may be; and thereafter the action shall proceed as if such added defender had originally been made a party to the cause; and in the event of no defences or answers being lodged by such added defender, after being duly served as aforesaid, the pursuer shall be entitled to take decree against him in the undefended roll or otherwise according to the present practice. In the event of defences being lodged, the pursuer shall print the record along with such defences; and the action shall thereafter proceed in ordinary form: Provided always that the pursuer shall be liable for any expenses occasioned to the original defender by his failure to call such added defender in the first instance, unless cause be shown to the contrary; and the Court or Lord Ordinary

shall make it a condition of such amendment being allowed that said expenses shall first be paid unless satisfied that the pursuer had sufficient reason for not calling the said additional defender in the first instance.

6. *Amending Conclusions*

It shall be competent for the pursuer, at any time before final judgment, to amend the conclusions of the summons or other writ to the effect of increasing the sum for which he sues, or subjecting any other additional funds or property to the adjudication of the Court on such terms as to expenses as to the Court or Lord Ordinary shall seem proper; and such amendment shall be allowed in all cases where, according to the existing practice, it would have been competent to raise a supplementary action; but in all other cases shall only be allowed in the discretion of the Court or Lord Ordinary.

7. *Amendment not Limited by Remedy Concluded for*

It shall be competent for the Court or Lord Ordinary to allow any amendment of the summons or other writ which may be necessary for the purpose of determining, in the existing action or proceeding, the real question in controversy between the parties, notwithstanding that, in consequence of such amendment, a larger or different remedy than that originally concluded for is thereby sought; but such amendment shall only be allowed on such terms as to expenses as to the Court or Lord Ordinary shall seem proper.

APPENDIX REFERRED TO

X. Y.

(Designation and address.)

Take notice that, in the action in which A. B. is the pursuer and C. D. is the defender, the record in which, as now amended, is herewith enclosed, your name has, by order of Lord Ordinary, dated _____, been added as a defender; and the conclusions of the action, originally directed against the said C. D., are now also directed against you. If you desire to defend the said action you will require to lodge defences within _____ days from the date of service hereof, under certification that, if you fail to do so, the said A. B. will be entitled to take decree against you in the undefended roll in terms of the conclusions of the said action [or obtain decree in absence against you, in cases of suspension and interdicts, etc.].

3. *Leading Appeal*

An appeal shall be held to be brought before a Division of the Court in the sense of section 9 of the Act 48 Geo. III. c. 151, when it appears in the single bills; and when two or more appeals having a contingency with each other appear in the single bills of both Divisions on the same day, the appeal which appears in the single bills of the First Division shall be held to be the first or leading appeal.

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CHAPTER VI.—EXTRACTS

(1 & 2 Vict. c. 118, sec. 18; 31 & 32 Vict. c. 54)

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2. *Warrant for Imprisonment*

In extracts of decrees and acts of the Court of Session and of the Sheriff Courts, prepared and issued under authority of the statute 1 & 2 Vict. c. 114, the warrant appointed to be inserted by the said Act shall not contain the words "under the pain of poinding and imprisonment," but in place thereof shall contain the words "under the pain of poinding." But this provision shall not apply to extract decrees for payment of taxes, fines, or penalties payable to His Majesty, or of rates and assessments lawfully imposed, or to be imposed, or to extract decrees for payment of aliment, or to extract decrees *ad factum præstandum*, in all which cases the forms of warrants shall remain as hitherto.

3. *Form of Execution Indorsed on Extract*

When the officer's execution of charge shall be written and indorsed upon the principal extract, the form of execution shall, as nearly as the circumstances will permit, be in terms of the form Schedule B hereto annexed.

4. *Indorsement of Extracts*

The officer subscribing any extract of a decree of the Court shall specify in writing, on the last page thereof, the date at which the same was completed by his subscription.

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BOOK C.—OUTER HOUSE

CHAPTER VIII.—APPEALS UNDER THE FINANCE ACT, 1894
(57 & 58 Vict. c. 30, sec. 10)

BOOK D.—INNER HOUSE

CHAPTER III.—APPEALS FROM INFERIOR COURTS
(31 & 32 Vict. c. 100, sec. 106; 7 Edw. VII. c. 51, sec. 40)1. *Printing and Boxing during Session*

The appellant shall, during session, within fourteen days after the process has been received by the clerk of Court, print and box the note of appeal, record, interlocutors [and proof, if any ¹] unless within eight days after the process has been received by the clerk he shall have obtained an interlocutor of the Court dispensing with printing in whole or in part; in which case the appellant shall only print and box, as aforesaid, those papers the printing whereof has not been dispensed with; and if printing has been in whole dispensed with, shall lodge with the clerk of court a manuscript copy of the note of appeal, furnishing another copy to the clerk of the Lord President of the Division: And if the appellant shall fail, within the said period of fourteen days, to print and box, or lodge and furnish, the papers required as aforesaid, he shall be held to have abandoned his appeal, and shall not be entitled to insist therein, except upon being repone, as hereinafter provided.

2. *Printing and Boxing during Vacation*

The appellant shall, during vacation, within fourteen days after the process has been received by the clerk of court, deposit with the said clerk a print of the note of appeal, record, interlocutors, [and proof, if any ¹] unless within eight days after the process has been received by the clerk he shall have obtained from the Lord Ordinary officiating on the Bills an interlocutor dispensing with printing in whole or in part, for which purpose the assistant-clerk shall, if required, lay the process before the Lord Ordinary on the Bills; and in such case the appellant shall deposit with the clerk, as aforesaid, a print of those papers the printing whereof has not been dispensed with; and if printing has been in whole dispensed with, shall lodge with the said clerk a manuscript copy of

¹ See Acts of Sederunt of 23rd November, 1921, and 27th October, 1922, pages 423 and 430 hereof.

the note of appeal; and the appellant shall, upon the box-day or sederunt-day next following the deposit of such print with the clerk, box copies of the same to the Court; or, if printing has been in whole dispensed with, shall furnish to the clerk of the Lord President of the Division a manuscript copy of the note of appeal: And if the appellant shall fail, within the said period of fourteen days, to deposit with the clerk of Court, as aforesaid, a print of the papers required, or to lodge with him a manuscript copy of the note of appeal, as the case may be, or to box or furnish the same as aforesaid, on the box-day or sederunt-day next thereafter, he shall be held to have abandoned his appeal, and shall not be entitled to insist therein, except upon being reponed, as herein-after provided.

3. *Reponing*

It shall be lawful for the appellant, within eight days after the appeal has been held to be abandoned as aforesaid, to move the Court during Session, or the Lord Ordinary officiating on the Bills during vacation, to repone him to the effect of entitling him to insist in the appeal; which motion shall not be granted by the Court or the Lord Ordinary except upon cause shown, and upon such conditions as to printing, and payment of expenses to the respondent, or otherwise, as to the Court or the Lord Ordinary shall seem just.

4. *Respondent may Print and Box Abandoned Appeal*

It shall be lawful for the respondent within eight days after the appeal has been held to be abandoned as aforesaid, if during session, to print and box the note of appeal, record, interlocutors, and proof, if any¹; and if during vacation, to deposit a print thereof with the clerk of Court, and thereafter to insist in the appeal, as if it had been taken by himself; in which case the appellant shall also be entitled to insist in the appeal.

5. *Retransmission of Abandoned Appeal*

On the expiry of the said period of eight days after the appeal has been held to be abandoned as aforesaid, if the appellant shall not have been reponed, and if the respondent does not insist in the appeal, the judgment or judgments complained of shall become final, and shall be treated in all respects as if no appeal had been taken against the same; and the Clerk of Court shall forthwith retransmit the process to the clerk of the inferior Court: Provided always, that before retransmitting the process, the clerk of Court or his assistant shall engross upon the interlocutor sheet and sign a certificate in these or similar terms:—" [Date]—Retransmitted in respect of the abandonment of the appeal"; and, in respect of said certificate, the Sheriff, or other judge of the inferior Court, shall, upon a motion being made before him to that effect, grant decree for payment to the respondent in the appeal of the sum of £3, 3s. of expenses.

¹ See Acts of Sederunt referred to on previous page.

6. *Appeals against Applying Verdict*

The foregoing provisions shall apply to appeals under the Sheriff Courts (Scotland) Act, 1907, but in the case of appeals against interlocutors applying verdicts of juries in the Sheriff Court, it shall not be necessary to print any notes of the evidence unless an order appointing the same to be printed shall be made by the Court of Session.

7. *Where New Trial Ordered*

In appeals against interlocutors applying verdicts of juries in the Sheriff Court, when the Court of Session shall order a new trial, it shall be the duty of the party wishing to proceed with the cause in the Sheriff Court to furnish the sheriff-clerk with a certified copy of the interlocutor making such order.

CHAPTER IV.—REMITTED CAUSES UNDER THE SHERIFF COURTS (SCOTLAND) ACT, 1907

(7 *Edw. VII. c. 51, sec. 40*)

1. *Form of Note*

The party desiring the cause to be remitted shall cause to be written upon the interlocutor sheet in the Sheriff Court a note in the following terms:—"The pursuer (or defender or other party) requires the cause to be remitted to the Division of the Court of Session"; and the said note shall specify the Division and shall be signed by the party making the application, or his agent, and shall bear the date on which it is signed.

2. *Notice of Application*

The clerk of the inferior Court shall, within two days after the date of such application being made, send written notice of such application to the opposite party, or his agent, provided that the failure to give such notice shall not invalidate the remission, but the Court of Session may give such remedy for any disadvantage or inconvenience thereby occasioned as may in the circumstances be thought proper.

3. *Transmission where Remit ex proprio motu*

Where such application shall have been made, or in cases where the Sheriff has *ex proprio motu* under the provisions of section 5 of said Act pronounced an interlocutor remitting the cause to one of the Divisions of the Court of Session, the clerk of the inferior Court shall, within two days thereafter, transmit the process to the clerk of the Division of the Court to which the

cause is remitted, who shall write on the interlocutor sheet a note of the day on which it is received.

4. *Printing, Boxing, etc.*

Upon the process being so remitted, Regulations in Book D, Chapter III., secs. 1 to 6 inclusive, in regard to appeals from inferior Courts, shall apply, with this qualification, that in the event of an application for a remission of the cause being abandoned, or held to be abandoned, the docquet written by the clerk of Court or his assistant shall be in the following terms: "Retransmitted in respect of the abandonment of 'the remission.'" In cases remitted *ex proprio motu* by the Sheriff, the pursuer, or party leading in the cause, shall act as if he were appellant and the other party to the cause shall be considered the respondent, under the said Regulations. But should the pursuer or party leading fail to print and proceed in manner above provided within fourteen days after the process has been received by the clerk of court, it shall be competent for any other party to the cause to print and proceed as above provided within the eight days succeeding; or otherwise it shall be competent for the pursuer, or party leading, to move the Court or Lord Ordinary on the Bills during the said eight days to be reponed on cause shown in the same manner, and subject to the same conditions as is provided in the case of appeals. And on the expiry of the said eight days without printing or reponing being done, the Clerk of Court shall retransmit the process to the clerk of the inferior Court, as a cause in which the remission has been abandoned, with a docquet on the interlocutor sheet in the terms above provided. In respect of such docquet the Sheriff shall, on motion made, pronounce such order as may be just, and shall have power to deal with the expenses of the remission as expenses in the cause.

5. *Procedure on Single Bills*

Upon the appearance of the cause in the Single Bills of the Division to which it has been remitted parties will be heard upon any motion made to retransmit the cause to the Sheriff Court, or directed against the competency of the remission, and if the motion to retransmit be refused and the remission held competent, the mode and course of further procedure in the cause (including all questions as to its competency or relevancy) will thereafter be determined by the said Division in the Single Bills or in the Summar Roll as they may think fit.

6. *Regulations to Supersede Sec. 95, Sched. I., of Sheriff Courts Act, 1907*

The regulations above set forth shall be observed and come in place of the provisions in paragraph 95 of the First Schedule of the said Sheriff Courts Act.

CHAPTER V.—APPEALS UNDER SPECIAL STATUTES

1. APPEALS FROM SHERIFF UNDER THE AGRICULTURAL HOLDINGS ACT, 1908, SEC. 11 (3)¹(8 *Edw. VII. c. 64, sec. 11 (3)*)(a) *Time for Appealing*

It shall be competent to appeal under the Agricultural Holdings Act, 1908, section 11 (3), provision (*sic*) against the opinion of the Sheriff within twenty-one days from the date of such opinion, but not later.

(b) *Sheriff Courts (Scotland) Act, 1907, to Apply*

Such appeal shall be taken in the form and manner prescribed for appeals to the Court of Session in the Sheriff Courts (Scotland) Act, 1907, and be subject to the regulations thereanent, so far as applicable and not inconsistent with the foregoing provision.

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BOOK J.—PROCEEDINGS IN CERTAIN STATUTORY COURTS

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CHAPTER II.—APPEALS FROM THE DECISIONS OF REFEREES UNDER THE FINANCE (1909-10) ACT, 1910

(10 *Edw. VII. c. 8*)

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BOOK L.—SHERIFF COURTS

CHAPTER I.—NAUTICAL ASSESSORS IN SHERIFF COURT

(57 & 58 *Vict. c. 40*)1. *Procedure and Number of Assessors*

In any action or proceeding in the Sheriff Court to which the Nautical Assessors Act, 1894, applies, the number of assessors to be summoned to the assistance of the Court at any particular

¹ This statute is now superseded by the Agricultural Holdings Act, 1923 (13 & 14 *Geo. v. c. 10*).

stage of the cause, whether on the initiative of the Court or on the application of any party, shall be one in the case of a proof, and one or more than one in the case of a hearing on appeal, as the Court shall think fit, provided always (a) that intimation of the name or names of the person or persons proposed to be summoned shall be given to the parties by the sheriff-clerk at least *eight* days before the proof or the hearing for which the summons is to be issued; (b) that if any party intends to object to the person or persons proposed to be summoned he shall state his objection, with the grounds of it, by minute lodged in process within *two* days after receipt of the intimation; (c) that the objections, if any, shall be disposed of by the Court at least *three* days before the proof or the hearing; (d) that if the objection is sustained, the like procedure shall be followed for securing another assessor, and the Court shall, if necessary for that purpose, adjourn the proof or the hearing; and (e) that it shall be the duty of the sheriff-clerk, if no minute is lodged as aforesaid or when any objection has been taken and repelled, to arrange for the attendance at the proof or hearing of the person or persons named in the foresaid intimation.

2. Remuneration of Assessor

The remuneration of every person attending as a nautical assessor under the foresaid Act of Parliament shall be three guineas a day for each day on which he so attends, and also for any Sunday over which he is necessarily detained at the seat of Court, besides maintenance and travelling expenses. In the case of an assessor resident out of Scotland, he shall be entitled to charge a day for coming and a day for going at the above rate, but other assessors shall not be entitled to a fee for travelling days unless, owing to the distance from the seat of the Court at which they reside, it is impossible, with reasonable convenience, to travel on the day or days on which they are required to sit in Court.

3. Consignation to meet Expense

When, on the motion of a party to the cause, an assessor or assessors is or are to be summoned under the provisions of the foresaid Act of Parliament, the motion shall only be granted on condition that the party making it shall consign with the sheriff-clerk such sum to meet the fees and expenses above provided as the Court may determine; and when an assessor or assessors is or are to be summoned *ex proprio motu* of the Court, such consignation shall be made by the pursuer of the action, unless the Court shall otherwise direct.

CHAPTER II.—LETTERS OF REQUEST (FOREIGN WITNESSES)

1. Form of Minute

Where the evidence of any witness resident abroad is material for the determination of a cause depending before a Sheriff Court,

the party desiring to obtain such evidence may apply to the Sheriff, by a minute in the form hereto appended (Schedule A), for a letter of request addressed to the judge or judges of the foreign tribunal within whose jurisdiction the witness is residing.

2. Form of Letters

On considering such minute and hearing the objections thereto, if any, the Sheriff may grant the same, and authorise a letter of request to be issued, which letter of request shall be in the terms hereto appended (Schedule B), and shall be signed by the Sheriff. The said letter of request shall be prepared by the party moving for the same, and shall be lodged with the sheriff-clerk along with the minute mentioned in the preceding section.

3. Agent Bound in Expense

It shall be a condition of granting any such letter of request that the agent for the party moving therefor shall, before the letter of request is issued, become personally bound for the whole expenses which may become due and payable in respect thereof to the Court before which the evidence is taken, as well as to the witnesses examined, and make consignment of such sum to meet said expenses as the Sheriff shall determine.

4. Translations of Letter and Interrogatories

There shall be lodged by the party obtaining a letter of request a translation into the language of the Court to which the letter is directed, of the letter and of the relative interrogatories.

5. Transmission of Letter to Foreign Office

The letter of request, when issued and signed as aforesaid, shall, along with interrogatories adjusted according to the present practice and the relative translations, be forthwith forwarded by the sheriff-clerk to His Majesty's Secretary of State for Foreign Affairs, requesting that the evidence taken under the same shall, when received, be forwarded to him, under seal, to abide the orders of Court.

6. Definition of "Sheriff"

In this section "Sheriff" shall be held to include salaried Sheriff-Substitute.

SCHEDULE A

Minute for A. B., pursuer [or C. D., defender], in the action presently depending in the Sheriff Court of _____ at _____, at the instance of A. B. against C. D.

for the pursuer [or defender] stated that the following persons, viz. [*state names and designations, including place of residence of proposed witnesses*], are material witnesses for the pursuer [or defender] in support of the claim [or defence] in this

action, and he prayed the Court to issue a letter of request, addressed to [*state the judge or tribunal within whose jurisdiction the witnesses are resident*], to take the evidence of said witnesses.
[Signed by the parties' agent.]

SCHEDULE B

Whereas an action is now pending in the Sheriff Court of
at _____, Scotland, in which A. B. is pursuer
and C. D. is defender : And whereas it has been represented to the
said Court that it is necessary, for the purposes of justice and for
the due determination of the matters in dispute between the parties,
that the following persons should be examined as witnesses upon
oath, that is to say :—

- E. F., of _____
- G. H., of _____
- and I. J., of _____

And it appearing that such witnesses are resident within the
jurisdiction of your honourable Court :

Now I, _____, Sheriff [or Sheriff-Substitute] of
_____, have the honour to request, and do hereby request, that for
the reasons aforesaid, and for the assistance of the said Court,
you, as the president and judges of the said _____, or some one
or more of you, will be pleased to summon the said witnesses to
attend at such time and place as you shall appoint, before some one
or more of you, or such other person as according to the procedure
of your Court is competent to take the examination of witnesses,
and that you will cause such witnesses to be examined upon the
interrogatories which accompany this letter of request, in the
presence of the agents of the pursuer and defender, or such of
them as shall, on due notice given, attend such examination:

And I further have the honour to request that you will be
pleased to cause the answers of the said witnesses to be reduced
into writing, and all books, letters, papers, and documents pro-
duced upon such examination to be duly marked for identification;
and that you will be further pleased to authenticate such examina-
tion by the seal of your tribunal, or in such other way as [is] in
accordance with your procedure, and to return the same through
His Majesty's Secretary of State for Foreign Affairs for trans-
mission to me.

[Signed by the Sheriff or Sheriff-Substitute.]
[Address to the Foreign Court.]

CHAPTER III.—TAXES UPON FUNDS *IN MANIBUS CURIAE*

(51 & 52 Vict. c. 8 sec. 24 (3); Finance Act 1894, sec. 8 (1); 57 &
58 Vict. c. 30; 36 Geo. III. c. 52, sec. 25; 16 & 17 Vict.
c. 51, sec. 53.)

1. Certificate by Officer of Inland Revenue

No decree, warrant, or order for payment of any consigned

money or for transfer or conveyance to any person of any stocks, shares, or other property, heritable or moveable, in any process for the distribution of the estate of any deceased, pending in the Sheriff Court, shall issue until there is lodged with the sheriff-clerk a certificate by the proper officer in the Department of Inland Revenue that all income tax, estate duty, legacy duty, succession duty, and any other duty payable to the Commissioners of Inland Revenue, have been paid and satisfied to the Department in respect of any such money, stocks, shares, or other property or any part thereof so to be paid, transferred, or conveyed as aforesaid.

2. Clerks to Enforce above Provision

The sheriff-clerk shall not present for the signature of the Sheriff any such decree, warrant, or order as aforesaid, without the provisions of the above section having been first complied with.

CHAPTER IV.—FORM OF CONSIGNATION BOOKS

(56 & 57 Vict. c. 44, sec. 3)

The Books directed by the 3rd section of the Act of Parliament, 56 & 57 Vict. c. 44, to be kept by sheriff-clerks shall be in the form of the Schedules hereto annexed.

CHAPTER V.—COMMISSARY COURTS

(Confirmation and Probate Act, 1858, 21 & 22 Vict. c. 56, sec. 18; Sheriff Courts (Scotland) Act, 1876, 39 & 40 Vict. c. 70, sec. 54)

1. Commissary Courts

The business conducted previous to the passing of the Act 39 & 40 Vict. c. 70 (the Sheriff Courts (Scotland) Act, 1876) in the Commissary Courts, and by that Act transferred to the Sheriff Courts in Scotland, shall continue to be conducted at the same places in each commissariat as at the passing of the said Act, and also at the following places, viz.:—In the commissariat of the county of Renfrew, at Greenock in addition to Paisley; in the commissariat of the county of Lanark, at Lanark, Airdrie, and Hamilton in addition to Glasgow; and in the commissariat of the county of Ayr, at Kilmarnock in addition to Ayr.

2. Petitions in Commissary Causes

It shall be competent in the case of persons who may have died domiciled in any of the districts into which a county may be divided for ordinary Sheriff Court purposes, to present petitions in commissary causes, relating to the estates of such persons, in

the Sheriff Court of such district; but it shall not be competent to record inventories or expedite confirmations except at the places specified in the preceding section of this Act.

3. *Records*

The records, books, documents, papers, and things belonging to the office of commissary clerk shall be kept in custody of the sheriff-clerk at the places where confirmation in the causes to which they relate has been or may be expedite.

4. *Caveats*

In any commissariat where confirmations may be expedite or petitions presented at more places than one, a caveat lodged with the proper officer at any one of such places shall be held to apply to the whole commissariat, and a copy thereof shall forthwith be transmitted by such officer to any other place or places within the commissariat where the application against which the caveat is lodged might competently be made.

5. *Postal Presentation of Inventories*

Where an inventory of personal estate with any relative writs is sent by post by an executor or any duly qualified law agent in Scotland, acting on behalf of such executor, to any sheriff-clerk for registration in the books of his Court, such clerk shall not be entitled to insist on personal attendance to present such inventory, or that the inventory be presented by a local agent, but shall receive and record the same as having been presented by the sender, and transmit the confirmation and relative writs to the presenter by post, if required, on payment of the usual fees.

6. *Notice for Register of Edictal Citations*

When a petition is presented to the commissary for the appointment of an executor, the commissary-clerk of Edinburgh shall transmit, in a safe and convenient manner, and the sheriff-clerk shall transmit, through the post office, to the Keeper of the Record of Edictal Citations at Edinburgh, a note specifying the names and designations of the petitioner and of the deceased person, the place and date of his death, and the character in which the petitioner seeks to be decerned executor; and the said note of particulars shall be framed as nearly as may be in the form of Schedule B annexed to the Act 21 & 22 Vict. c. 56 (the Confirmation and Probate Act, 1858), and shall be dated and subscribed by such clerk.

7. *Certified Abstracts*

The Keeper of the Record of Edictal Citations shall transmit, through the post office, to such clerk, a certified copy of the printed and published particulars, in the form of Schedule B annexed to

the said Act, and which copy shall be dated and subscribed by the said keeper, and the said certified abstracts shall be preserved by such clerk, and made patent to all persons desiring to see the same, on payment of the specified fee.

8. *Printing of Abstracts*

The copies of the abstracts of petitions for the appointment of an executor shall be printed by the Keeper of the Record of Edictal Citations, and sold to the public at such prices as may be estimated to be sufficient to pay the expense of printing the same, and the printing and sale of the said abstracts shall be subject to the same regulations as those applicable to the minute-book and record of edictal citations.

9. *Certificate of Grants of Probates in Midlothian*

The certificate to be granted by the commissary-clerk of the county of Edinburgh upon grants of probate and administration, in terms of section 14 and Schedule F of the said Act, shall be dated as well as subscribed by him.

10. *Copies of Probates*

That all copies of probates or letters of administration deposited with the commissary-clerk of the county of Edinburgh, under the 14th section of the said Act, shall be made patent to all persons desiring to see the same, on payment of the specified fee; and when required, the said commissary-clerk shall furnish copies or excerpts of said documents, on payment of the specified fee.

CHAPTER VI.—CESSIOS ¹

(6 & 7 Will. IV. c. 56; 43 & 44 Vict. c. 34; 44 & 45 Vict. c. 22;
19 & 20 Vict. c. 79, sec. 185)

CHAPTER VII.—WINDING UP UNDER THE BUILDING SOCIETIES Act 1874

(37 & 38 Vict. c. 42, sec. 32)

CHAPTER VIII.—JUDICIAL FACTORS

(43 & 44 Vict. c. 4, secs. 5 and 6)

1. *Applications to be Summary*

All applications under Judicial Factors (Scotland) Act, 1880, shall be disposed of summarily.

¹ The Bankruptcy (Scotland) Act, 1913 (3 & 4 Geo. v. c. 20), repealed the statutes here referred to, and this chapter of the Codifying Act has therefore ceased to be operative. See sections 174 to 176 of the Act for provisions as to summary sequestration, which embodies certain of the features found in the superseded process of *cessio*.

2. Not to Fall Asleep

Such applications shall not fall asleep by lapse of year and day.

3. Incidental Applications

Applications for special powers, renewal, interim audit, recal, removal, and discharge, shall form steps in the original process.

4. First Order

The first order in every such application shall be intimation by copy of petition on the walls of the Sheriff Court and to the Accountant of the Court of Session, and such service on those having interest as may be deemed proper by the Sheriff, and for answers. The Sheriff may direct notice by advertisement of the application to be made in terms of Schedule A appended hereto.

5. Accountant of Court to send Information of any prior Application

The Accountant, on receiving intimation of an application for the appointment of a factor, shall, in the event of an application for similar appointment to the same wards or estate having been previously intimated to him, forthwith, as soon as possible, report the same to the sheriff-clerk, and shall communicate any information he may possess which may be of use to the Sheriff in disposing of the application.

6. Powers of Factor and Time for Finding Caution

All appointments shall be made with only the usual powers, and be conditional upon the person appointed finding satisfactory caution as after provided. When not otherwise expressed in the interlocutor, the time allowed for finding caution shall be limited to three weeks from the date of appointment, but the Sheriff may on motion made before the expiry of that period, and on cause shown, allow further time for finding caution. Should caution not be found within the time allowed, the appointment shall *ipso facto* fall.

7. Procedure in Finding Caution

When the cautioner is a private person, caution shall be found to the satisfaction of the sheriff-clerk. A form of bond is appended in Schedule B hereto. After the bond has been executed by the factor and his cautioner or cautioners, he shall procure one or more certificates by a justice of peace of the county in which the cautioner resides or carries on business in the terms appended, and thereupon the petitioner's agent shall add a certificate in the terms appended to said schedule, and the sheriff-clerk shall add the words "Caution received by me," with his signature and date. Where the Sheriff authorises caution in the terms of

section 27 of the Pupils Protection Act, the receipt for the premium must be called for by the sheriff-clerk when it becomes due, and the payment or non-payment of the premium shall be forthwith reported to the Accountant. If caution under said section be found, the company shall be taken bound to intimate the non-payment of the premium to the Accountant. Where new caution has to be found in the course of factorial management, these provisions shall also apply and be observed. No factor shall be entitled to act until he has obtained extract.

8. Premiums to Guarantee Companies and Expenses of Bond of Caution

The Accountant of Court shall allow as a charge against the factory estate (a) the premium paid by the judicial factor where a company bond of caution has been accepted, or such part thereof as he deems proper; and (b) the expense of the necessary procedure in obtaining the approval of a bond of caution, or the limitation of the amount; but the fact of such charge shall be taken into account by the Accountant of Court in fixing the factor's remuneration.

9. Transmission of Bond to Accountant

After the sheriff-clerk shall have added his docquet he shall transmit the bond of caution to the Accountant, and the sheriff-clerk may thereafter issue an extract in the case of an appointment.

10. New Caution

On the death or insolvency of a cautioner, or non-payment of a premium, the factor, and whenever it comes to his knowledge the sheriff-clerk, shall forthwith give notice in writing thereof to the Accountant, who shall require new caution to be found; and if his requisition be not complied with he shall lay the matter before the Sheriff, in order that the Sheriff may order new caution within a specified time, in terms of section 6, or appoint a new factor, who shall find caution and obtain extract, all conform to these regulations.

11. Special Powers

When the factor desires special powers, he shall submit an application in writing in the first instance to the Accountant, who, after making such enquiries as may appear to him to be proper, shall put his opinion in writing that the same may be laid before the Sheriff, who, after intimation and service as aforesaid, and such procedure as he may think necessary, shall deal with and dispose of the factor's application. Special powers shall not be granted in any case until the factor has extracted the decree of his appointment.

12. *Factor's Discharge*

When the factor desires to be discharged he shall lodge a note in process, which the Sheriff shall order to be intimated and served as aforesaid. The factor's application shall thereafter be sent to the Accountant, who shall report his opinion in writing to the Sheriff, who shall deal with and dispose of the application.

13. *Amendment of Pupils Protection Act, 1849*

For the purpose of the Judicial Factors (Scotland) Act, 1880, the words "twenty-five" shall be substituted for the word "fifty" in the 5th section of the Pupils Protection Act (12 & 13 Vict. c. 51), and the word "Sheriff" shall be substituted for the words "Lord Ordinary" and the "Court" in the said Pupils Protection Act.

14. *Outlays of Accountant, Sheriff-Clerk, etc.*

All outlays by the Accountant and sheriff-clerk and office fees in the factory shall form a charge against the estate, and shall be satisfied and paid by the factor, unless the Sheriff shall see cause to subject the factor personally in the whole or any part thereof, in which case the factor shall be bound to relieve the estate of such outlay.

15. *Fee-Fund*

There shall be payable into the fee-fund established under the Pupils Protection Act by each estate under charge of a factor the fees fixed by and exigible under Book M, Chapter III. hereof.

16. *Definition of Judicial Factor*

The expression "judicial factor" in this Act has the same meaning as is assigned to it as in the Judicial Factors (Scotland) Act, 1880, and also includes guardians where caution is required.

SCHEDULE A

Notice is hereby given to all having interest, that application has been made to the Sheriff of _____ for the appointment of A. B. (design him), as factor *loco tutoris* (or *curator bonis*, as the case may be) to C. D., etc. (design him or them), or by A. B., factor *loco tutoris* to, or as *curator bonis* to, C. D., etc., for special powers to do, etc., or for discharge of his said office (as the case may be), in terms of the Judicial Factors (Scotland) Act, 1880 (43 & 44 Vict. c. 4), and answers fall to be lodged with me, on or before the _____ day of _____

E. F., *Sheriff-Clerk*.

SCHEDULE B

I, A. B. (design him), considering that by interlocutor dated _____, the Sheriff of _____ nominated and appointed me to be factor *loco tutoris* or *curator bonis* (as the case may be) to C. D. (design him or her), with the usual powers, I always

CHAPTER IX.—INFERIOR COURTS JUDGMENTS EXTENSION
ACT, 1882

(45 & 46 Vict. c. 31)

1. *Register of English and Irish Judgments*

In each county in Scotland, and at each place in such county at which the ordinary courts of the Sheriff-Substitute are held, there shall be kept by the sheriff-clerk a book, to be called "The Register of English and Irish Judgments," in which shall be registered *in extenso* all certificates issued in terms of the said Act, from any of the inferior Courts of England and Ireland, with a note of presentation appended to such certificate required by said Act.

2. *Attestation of Registration*

After registration as aforesaid, the sheriff-clerk shall append to such certificate and note of presentation an attestation signed by himself, of the registration of the same, in the terms set forth in the annexed Schedule A, which registered certificate with the attestation thereon by the sheriff-clerk, shall be sufficient warrant to officers of Court to charge the debtor in the judgment debt to make payment of the whole sums recoverable under such judgment, with the costs of obtaining and registering such certificate, within fifteen days after the date of such charge, and to use any further diligence that may be competent.

3. *Fees*

For granting any certificate issued in terms of said Act, and for registering any such certificate, with note of presentation as aforesaid, and attesting that such registration has been made, the sheriff-clerk shall be entitled to charge the fees set forth in the Schedule B hereto annexed; and for preparing and presenting any note of presentation required by said Act, and obtaining the registration of any certificate, and the attestation of such registration, law agents shall be entitled to charge the fees also set forth in said Schedule B.

4. *Sheriff-Clerk*

The words "sheriff-clerk" shall include sheriff-clerk depute.

SCHEDULE A

[Place and Date.]

I hereby declare that the foregoing certificate and note of presentation have been duly registered by me in the "Register of English and Irish Judgments" kept at this place, in terms of the Act 45 & 46 Vict. c. 31 and relative Act of Sederunt, Book L, Chapter IX.

A. B., Sheriff-Clerk (or Sheriff-Clerk Depute) of .

SCHEDULE B

1. *Sheriff-Clerk's Fees*

1. For granting the certificate contained in the schedule appended to said Act of Parliament.

In cases where the debt or sum decerned for does not exceed £12	£0 1 6
In cases where the debt or sum decerned for exceeds £12 and does not exceed £50	0 2 6
In cases where the debt or sum decerned for exceeds £50 and does not exceed £200	0 3 6
In all other cases	0 5 0

2. For registering any certificate issued in terms of the said Act, with note of presentation thereto appended, and attesting such registration

In cases where the debt or sum decerned for does not exceed £12	£0 1 6
In cases where the debt or sum decerned for exceeds £12 and does not exceed £50	0 1 6
In cases where the debt or sum decerned for exceeds £12 and does not exceed £50	0 2 6
In cases where the debt or sum decerned for exceeds £50 and does not exceed £200	0 3 6
In all other cases	0 5 0

2. *Law Agent's Fees*

1. For preparing and presenting any note of presentation as required by said Act, and obtaining registration of certificate issued in terms of said Act, with such note of presentation together with attestation of such registration.

In cases where the debt or sum decerned for does not exceed £15 (<i>sic</i>)	£0 1 6
In cases where the debt or sum decerned for exceeds £12 and does not exceed £50	0 2 6
In cases where the debt or sum decerned for exceeds £50 and does not exceed £200	0 3 6
In all other cases	0 5 0

CHAPTER X.—PROCEEDINGS UNDER THE ELECTIONS (SCOTLAND)
CORRUPT PRACTICES ACT, 1890

(53 & 54 *Vict. c. 55*)

CHAPTER XI.—APPEALS TO THE SHERIFF UNDER THE PILOTAGE
ACT, 1913¹

(2 & 3 *Geo. V. c. 31, sec. 28*)

¹ See Act of Sederunt, 29th October, 1919, amending C.A.S., Book L, c. 11.

CHAPTER XII.—APPLICATIONS UNDER THE DOGS ACT, 1906

(6 *Edw. VII. c. 32, sec. 5*)

See also Act of Sederunt, 31st January, 1917.

CHAPTER XIII.—PROCEEDINGS UNDER THE WORKMEN'S
COMPENSATION ACT, 1906

(6 *Edw. VII. c. 58*)

1. *Employment of Agent and Counsel*

A party to any arbitration under the Workmen's Compensation Act, 1906 (hereinafter called "The Act"), may appear in person, or be represented—

(a) By counsel;

(b) By a duly qualified law agent; or

(c) Where written authority from him is produced, by a member of his family, or any other person;

but no fee paid to a counsel shall be allowed on taxation, unless the arbitrator has certified that the employment of counsel was proper; and no person other than a counsel (when the appointment of counsel is authorised) or a duly qualified law agent shall be entitled to have any fee or reward for appearing or acting on behalf of any party in an arbitration under the Act; provided always that an arbitrator may, in the case of a workman appearing in person, or a member of his family appearing for him, or in the case of a manager, clerk, or other servant appearing as the representative of an employer, make such allowance in respect of loss of time and travelling expenses as he shall think reasonable.

An application under paragraph 9 of the First Schedule to the Act may in the case of neglect of children by a widow be made by the Procurator-Fiscal of the Sheriff Court or by the Parish Council.

2. *Application for Arbitration*

An application for the settlement by arbitration of any claim for compensation under the Act shall not be made unless and until some question has arisen between the parties, and such question has not been settled by agreement. The application shall state concisely the question which has arisen.

3. *Parties to Arbitration*

An application for the settlement by arbitration of the amount payable as compensation under the Act in a case where death has resulted from the accident may be made by the employer, or by the executor or other legal personal representative, if any, of the deceased workman, or by all or any of his dependants. It shall set forth the names of all the dependants (including those persons who claim to rank as dependants) so far as known to the applicant

or applicants, and, where it is presented by or on behalf of some only of the enumerated dependants, the rest of them shall be called as respondents; provided always that if in the course of the proceedings it appears that there are other dependants than those who are parties thereto, the Sheriff may order the petition to be served upon the omitted dependants, and may sist procedure in order to enable him or them to appear.

4. Court, where Parties Resident in Different Districts

Applications under this Act, if the parties reside in different districts, shall be made to the Sheriff Court of the county or district of a county—

1. In which the accident occurred; or
2. In the case of a claim by virtue of section 8 of the Act, in which the workman was last employed in the employment to the nature of which the disease was due; or
3. If the accident occurred at sea—

(a) in which the ship is at the time when intimation or service of the application is made; provided that such intimation or service is made to or on the master of the ship in the same county or district of a county; or

(b) in which the managing owners of the ship, or some or one of them, or the manager, may reside or have a place of business;¹

without prejudice to any transfer as hereinafter provided.

5. Transmissions to Forum conveniens

If a Sheriff before whom an application under the Act is brought is of opinion that the case can be more conveniently tried and determined in any other Court in Scotland, England, or Ireland, he may on the motion of any of the parties make an order remitting the case to such Court, and on such order being made it shall be the duty of the sheriff-clerk to transmit the application with all the relative documents to the sheriff-clerk or registrar of the Court named in the order, and to transfer to such sheriff-clerk or registrar any money invested in connection with such application in his name as sheriff-clerk, and the case shall thereafter proceed in the last-mentioned Court as if it had originated there.

6. Transmission of Money consigned in Post Office Savings Bank

When any money ordered to be transferred from one Court to another is invested in the Post Office Savings Bank in the name of the sheriff-clerk, such money shall be transferred into the name of the sheriff-clerk or registrar of the Court to which the money is ordered to be transferred, in accordance with regulations

¹ See Act of Sederunt of 25th May, 1920, page 419 hereof.

to be made by the Postmaster-General with the consent of the Treasury; and where any money ordered to be transferred is not so invested, it shall forthwith be so invested, and shall, when invested, be transferred as hereinbefore directed.

7. Claim of Indemnity

Where a claim for compensation under the Act is made against a principal, he may, at the calling of the case, move the Sheriff for authority to serve a copy of the petition, together with a notice of the claim for indemnity, upon any person against whom he intends to claim indemnity, and such person may within the time fixed by the Sheriff lodge a notice of appearance. If he does lodge a notice of appearance, he shall thereafter be deemed to be a party to the arbitration, and the question of his liability to indemnify the principal may, if they both consent, be summarily and finally determined therein; provided always that, if he is held in that process not to be liable to indemnify the principal, he shall not be subjected in any part of the claimant's expenses. If he fails to lodge a notice of appearance, he shall not be entitled, in any subsequent proceedings against him at the instance of the principal, to dispute the validity of any award made under the petition, whether the same be made of consent or otherwise.

8. Claims under section 8 of the Act

In any claim for compensation under section 8 of the Act, if the employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer, the Sheriff may grant authority to the employer to serve a copy of the application and of his averment as to the time and place of contracting the disease upon such other employer, and such other employer shall, upon such service, be held to be a party in the arbitration.

9. Incidental Applications

Applications under paragraphs 7, 8, 9, 15, 16, or 17 of the First Schedule to the Act, or paragraphs 9 (c) or 14 of the Second Schedule to the Act, shall be made by a minute, which shall be lodged in the original process, if any; and if there be no process, a copy of the recorded memorandum, certified by the sheriff-clerk, shall be lodged along with the minute, and shall be held to be the process. Such minute shall be intimated to the other party or parties interested, and thereafter be disposed of summarily, as if it were an application for settlement by arbitration under the Act. In all the cases referred to in this clause an entry showing how the application is disposed of shall be made by the sheriff-clerk in the special register kept for the purposes of the Act.

10. Expenses

The costs of and incident to all proceedings under the Act shall

not exceed the limits prescribed by the Act of Sederunt, and the regulations and tables of fees therein contained shall, so far as applicable, be held to apply to such proceedings. It shall be competent to an arbitrator agreed on by the parties to direct payment to his clerk of such remuneration as may be allowed by the auditor of the Sheriff Court of the district, but not exceeding a fee of £1 for each day of the trial, a fee of 5s. for each other necessary meeting with the parties, and a fee of 2s. for each necessary letter, besides outlays and copying charges.

11. *Memorandum*

(1) The memorandum as to any matter decided by a committee, or by an arbitrator other than a Sheriff, or by agreement, which is by paragraph 9 of the Second Schedule appended to the Act required to be sent to the sheriff-clerk, shall be as nearly as may be in terms of Form I. in the Appendix hereto. The sheriff-clerk shall forthwith send a copy (for which, unless it is supplied to him along with the memorandum, he shall be allowed to charge at the rate of 1s. per sheet) to the party or parties interested (other than the party from whom he received it) in a registered letter containing a request that he may be informed within a reasonable specified time whether the memorandum and award (or agreement) set forth therein are genuine, or are objected to; and if within the specified time he receives no intimation that the genuineness is disputed, or that the recording is objected to, then he shall, but not sooner than seven days after the despatch of such letter of request, record the memorandum in the special register to be kept by him for the purpose, unless he himself refuses to record it under paragraph 9 (*d*) of the said Second Schedule; but if the genuineness is disputed, or the recording is objected to, he shall send a notification of the fact to the party from whom he received the memorandum, along with an intimation that the memorandum will not be recorded without a special warrant from the Sheriff.

(2) An award by a Sheriff under the Act or a certified copy thereof shall be forthwith recorded by the sheriff-clerk in the said register as if it were a memorandum, and written notice of such recording and of the terms of the award shall be forthwith sent by him to the parties interested.

(3) Where an award of compensation has been made by a Court under subsection 4 of section 1 of the Act, the certificate thereof shall be sent by the party to whom the same is given to the sheriff-clerk of a Sheriff Court having jurisdiction, and the sheriff-clerk shall forthwith record it in the said register as if it were a memorandum, and written notice of such recording and of the terms of the certificate shall be sent by him to the other party or parties interested.

12. *Objections to Memorandum*

Where the genuineness of a memorandum under paragraph 9

of the Second Schedule appended to the Act is disputed, or when an employer objects to the recording of such memorandum under subsection (b) of said paragraph, or the sheriff-clerk refuses under subsection (d) of said paragraph to record such memorandum, the person disputing the genuineness, or the employer or the sheriff-clerk, as the case may be, shall lodge a minute stating clearly all the grounds for his action, and the memorandum shall thereupon be dealt with as if it were an application to the Sheriff for settlement by arbitration of the questions raised by the minute.

13. *Extract or Certified Copy of Memorandum*

Where an award, or a memorandum under paragraph 9 of the Second Schedule appended to the Act, or a certificate granted by a Court under subsection 4 of section 1 of the Act, has been recorded in the books of any Court, and any party takes in another Court any proceedings under the Act with reference to the subject-matter of such award, memorandum, or certificate, he shall lodge with his application an extract or certified copy of such award, memorandum, or certificate.

14. *Consignation on Order of Court*

No sum of money shall be paid into Court except upon an order of Court, or under and in respect of a recorded memorandum.

15. *Applications under paragraph 15 of Schedule I. of the Act*

(1) An application to the Court under paragraph 15 of Schedule I. of the Act shall be signed by or on behalf of both parties, and shall contain a statement of the facts which render the application necessary. It shall be accompanied by a copy of the report of every medical practitioner who has examined the workman, either on behalf of the employer or on the selection of the workman, and also by a copy of the application and of all the productions made therewith. The fee payable by the applicants shall be calculated at the rate of one shilling in the pound on twenty-six times the amount of the weekly payment claimed by or payable to the workman, so that the total fee shall not exceed one pound.

(2) The sheriff-clerk shall, if he finds the application to be in order, refer the matter to one of the medical referees appointed for the county or district of a county, and shall deliver or send by registered post to such referee the reference, which shall be as nearly as possible in terms of Form IV. in the Appendix hereto, and a copy of the application and productions.

(3) The sheriff-clerk shall also direct the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State,

and it shall be the duty of the workman on being served with such direction, which shall be as nearly as possible in terms of Form V. of the Appendix hereto, to submit himself for examination accordingly.

(4) Before making such direction the sheriff-clerk shall enquire whether the workman is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition, shall direct him to attend at such time and place as the referee may fix, and if satisfied that he is not in a fit condition to travel, shall so state in the reference.

(5) The sheriff-clerk shall deliver or send by registered post to each party a copy of the reference, and to the workman a copy of the direction to submit himself for examination.

(6) The medical referee on receipt of the reference shall fix a time and place for examination of the workman, and shall send notice thereof to the employer and workman.

(7) The medical referee shall, as soon as possible, forward his certificate on the matter to the sheriff-clerk by registered post.

(8) On the receipt of the certificate of the medical referee, the sheriff-clerk shall inform the parties by post that it has been received, and shall permit any party to inspect the same during office hours, and shall, on the application and at the cost of either party, furnish him with a copy of the certificate or allow him to take a copy thereof.

16. *Procedure where Workman intends to reside Abroad*

(1) When a workman receiving a weekly payment intends to cease to reside within the United Kingdom, he may apply to the Court to refer to a medical referee the question whether the incapacity of the workman resulting from the injury is likely to be of a permanent nature.

(2) The application shall be made by notice in writing, according to Form VI. in the Appendix, which shall be lodged with the sheriff-clerk, and shall be accompanied by a copy of the report of any medical practitioner who has examined the workman on the selection of the workman; and a copy of the application and of such report (if any) shall be served on the employer or his solicitor ten clear days before the hearing of the application, unless the sheriff-clerk gives leave for shorter notice; and the applicant shall lodge a copy of the application and of the report (if any) for the use of the medical referee.

(3) If the workman has been examined by a medical practitioner on behalf of the employer, the employer may at or at any time before the hearing of the application furnish the workman with a copy of the report of that practitioner as to the workman's condition, and lodge a copy of the report for the use of the medical referee.

(4) The sheriff-clerk, on being satisfied, after hearing parties if he thinks it necessary, that the applicant has a *bonâ fide* inten-

tion of ceasing to reside in the United Kingdom, shall refer the question to a medical referee, such reference being made as far as possible in terms of Form VII. in the Appendix hereto; and if he is not so satisfied, he may refuse to do so, but in that case he shall, if so requested by the applicant, refer the matter to the Sheriff, who may make such order as he may think fit.

(5) If the question is referred by the sheriff-clerk or by order of the Sheriff to a medical referee, the sheriff-clerk shall, in or as nearly as may be in terms of Form V. of the Appendix hereto, direct the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State; and the provisions of paragraphs 2 to 6 of section 15 hereof shall with the necessary modifications apply.

(6) The medical referee shall, as soon as possible, forward his certificate in the matter to the sheriff-clerk by registered post, specifying therein the nature of the incapacity of the workman, and whether the same is likely to be of a permanent nature, and the sheriff-clerk shall thereupon proceed in accordance with paragraph 8 of section 15 hereof.

(7) Where the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature, the sheriff-clerk shall on application furnish the workman—

(a) with a copy of the certificate of the medical referee, certified by the sheriff-clerk to be a true copy; and

(b) with a copy of the award, memorandum, or certificate under which the weekly payment is payable, certified by the sheriff-clerk to be a true copy; and

(c) with a certificate of identity according to Form VIII. in the Appendix hereto; and

(d) with a notice according to Form IX. in the Appendix, annexing thereto forms of certificate and declaration according to Forms X. and XI. in the Appendix;

and shall procure from the workman a specimen of his signature, and retain the same for reference.

(8) A workman who desires to have the weekly payments payable to him remitted to him while residing out of the United Kingdom, shall at intervals of three months from the date to which such payments were last made, submit himself to examination by a medical practitioner in the place where he is residing and shall produce to him the copy of the certificate of the medical referee and the certificate of identity furnished under the immediately preceding paragraph, and shall obtain from him a certificate in terms of Form X. in the Appendix that the incapacity of the workman resulting from the injury continues; and such certificate shall be verified by declaration by the medical practitioner, in the presence of the workman, before a person having authority to administer an oath.

(9) The workman shall also make a declaration of identity according to Form XI. in the Appendix, before a person having authority to administer an oath, producing to such person the

copy and certificate above mentioned, and the certificate of the medical practitioner by whom he has been examined.

(10) The workman shall forward the certificate and declaration in the two last preceding paragraphs mentioned to the sheriff-clerk, with a request, according to Form XII. in the Appendix, for the transmission to him of the amount of the weekly payments due to him, specifying the place where and the manner in which the amount is to be remitted, which request shall be signed by the workman in his own handwriting.

(11) On receipt of the certificate, declaration, and request, the sheriff-clerk shall examine the same, and may, if not satisfied that the same are in order, return the same for correction.

(12) When the sheriff-clerk is satisfied that the certificate, declaration, and request are in order, he shall send to the employer a notice according to Form XIII. in the Appendix, requesting him to forward the amount due; and the employer shall thereupon forward the amount to the sheriff-clerk, who shall remit the same, less any fees payable to the sheriff-clerk and the cost of transmission, to the workman at the address and in the manner requested by him, such remittance being in all cases at the cost and risk of the workman.

17. Stated Cases on Appeal

The following regulations shall apply to cases to be stated by a Sheriff in virtue of the provisions contained in paragraph 17 (b) of the Second Schedule appended to the Act :

- (a) An application to a Sheriff to state a case on a question of law determined by him shall be made by minute lodged in the process within seven days after the Sheriff has issued his award, and such minute shall set forth the question (or questions) of law proposed as the subject-matter of the case, and shall be accompanied by a deposit of £1, which shall be paid to the sheriff-clerk as his fee for preparing the case.
- (b) The sheriff-clerk shall within seven days from the lodging of such minute, accompanied as aforesaid, prepare the case and submit the same in draft to the parties or their agents.
- (c) Should the parties or their agents fail to agree as to the terms of the case, these shall be settled by the Sheriff, provided always that, if the Sheriff on a draft case being submitted to him is of opinion that any question of law stated in it was not raised by the admissions made or the facts proved before him, or that the application for a case is frivolous, he may refuse to state or sign the case, but in that event he shall grant to the applicant a certificate specifying the cause, and bearing the date, of the refusal.
- (d) The case shall be as nearly as possible in terms of

Form II. in the Appendix hereto, and shall bear to be stated by the Sheriff and shall be signed by him.¹

- (e) The appellant shall within seven days, or where such seven days expire during a vacation or recess of the Court of Session, then on or before the first ensuing sederunt day thereof, after the case as settled has been delivered to him, give written notice of his intention to proceed with it, and of the Division to which he proposes to submit it, to the other party or parties interested, and shall at the same time send to each of such parties a copy of the case. He shall also within the said seven days (or as above provided) transmit the case by post to, or cause the same to be lodged with, the principal¹ clerk of the Division mentioned in the foresaid notice, together with a certificate under the hand of himself or his law agent of the notice having been given to the other parties.
- (f) The regulations as to the printing of appeals from the Sheriff Courts contained in Book D, Chapter III. hereof, shall apply to cases stated under the Act, provided always that it shall not be necessary to print any document, except the case, without a special order from the Court, and provided also that either party may move for an order on the sheriff-clerk to transmit the process.
- (g) The Court shall have power when determining a case to make such order arising out of the answer (or answers) given by them to the question (or questions) put as they shall think necessary, and also to make such order as to the costs of the case as to them may seem right. They may also, before giving their determination, send back the case to the Sheriff for amendment.
- (h) When a Sheriff has refused to state and sign a case, the applicant for the case may within seven days from the date of such refusal apply by a written note to one of the Divisions of the Court of Session for an order upon the other party or parties to show cause why a case should not be stated. Such note, which may be in terms of Form III. of the Appendix hereto, shall be accompanied by the abovementioned certificate of refusal, and shall state shortly the nature of the cause, the facts, and the question or questions of law which the applicant desires to raise; and any judge of the Division, or in vacation the Lord Ordinary officiating on the Bills, may, after intimation to the other party or parties, dispose of it summarily, and his judgment upon it, as well as upon the question of costs, shall be final. If an order is pronounced requiring the Sheriff to state and sign a case, the case shall be stated as hereinbefore provided, and these regulations shall apply to the subsequent procedure.

¹ See Act of Sederunt of 6th July, 1915, page 417 hereof.

FORM I

Form of Memorandum under paragraph 9 of Schedule II. (and Act of Sederunt, sec. 11)

Workmen's Compensation Act, 1906

A. B. (*name and design him or them, and if legal representative state character*), Claimant,

v.

C. D. (*name and design him or them*), Respondent.

The claimant claimed compensation from the respondent in respect of—

Personal injury (here state very shortly the nature of the injury, e.g. broken leg, loss of arm, internal injuries, etc.),

[or]

The death of _____, of whom the claimant is (here state relationship, e.g. widow, son, etc., and whether or not dependent, or representative),

caused by accident in the employment of (here state whether in service of the respondent; or of a contractor, naming and designing him, employed by the respondent), _____, at _____, on _____.

The question in dispute, which was (*here state shortly whether liability, right to claim, or amount of compensation only was disputed*) was referred to (*here state whether a committee or arbitrator, describing or naming them*) [or] determined by agreement.

The **decision** [or] **award** [or] **agreement** was made on _____, and was as follows:

(*Here set out the same.*)

It is requested that this memorandum be recorded in the Special Register of the Sheriff Court of _____ at _____.

To the Sheriff-Clerk,
Court House, _____.

Signature, _____
Dated, _____.

FORM II

Form of Stated Case

In the Sheriff Court of _____ at _____, on appeal to the _____ Division of the Court of Session, in an arbitration under the Workmen's Compensation Act, 1906, between A. B. (*name and design him*), Appellant, and C. D. & Co. (*name and design them*), Respondents.

This is an arbitration [*state concisely and without argument*]

the nature of the application, and the facts admitted or proved which raise the question (or questions) of law to be submitted on appeal].

The question (or questions) of law for the opinion of the Court is (or are) [*state it or them*].

This case is stated [*or, as adjusted by the parties, is stated*] by me.

[*Signature of Sheriff.*]

Dated this day of 19 .

FORM III

Form of Note for Order to state a Case

In the Sheriff Court of at on appeal, at the instance of A. B. (*name and design him*), *Appellant*, to the

Division of the Court of Session, in an arbitration under the Workmen's Compensation Act, 1906, between (*state the parties*).

In this arbitration, which was decided by Sheriff on , the said Sheriff has refused, conform to certificate herewith produced, to state and sign a case for which the appellant duly applied in writing.

[*Here state concisely and without argument the nature of the application, and the facts alleged to be admitted or proved which raised the question (or questions) of law proposed to be submitted on appeal.*]

The question (or questions) of law proposed to be submitted for the opinion of the Court is (or are) [*state it or them*].

The appellant prays for an order on the respondents, the said , to show cause why a case should not be stated by the Sheriff for the following reasons:—[*here state seriatim the reasons*].

[*To be signed by the appellant or his counsel or law agent.*]

Dated this day of 19 .

FORM IV

Form of Reference by Sheriff-Clerk to Medical Referee under Schedule I., sec. 15, of the Act, and Act of Sederunt, sec. 15 (2).

Workmen's Compensation Act, 1906

Sheriff Court of at .

A. B., *Claimant*, v. C. D., *Respondent*.

On the application of A. B., residing at , and C. D.,

of (a copy of which is hereto annexed), reference is hereby made to of , a medical referee under the said Act, to examine the said and give his certificate as to the condition of the said and his fitness for employment, specifying if necessary the kind of employment for which he is fit;

[or]

whether or to what extent the incapacity of the said is due to the accident.

Copies of the reports of the medical practitioners by whom the said has been examined are annexed. The said , who is now at , has been directed to submit himself for examination.

The said is in a fit condition to travel, and he has been directed to attend for examination at such time and place as may be fixed by the referee;

[or]

The said does not appear to be in a fit condition to travel.

The referee is requested to forward his certificate to the Sheriff-Clerk of at on or before the day of .

Signature

Dated

Sheriff-Clerk of

FORM V

Form of Direction by Sheriff-Clerk to Workman

(Act of Sederunt, secs. 15 (3) and 16 (5))

Workmen's Compensation Act, 1906

Sheriff Court of at .

A. B., Claimant, v. C. D., Respondent.

To A. B. (here state name and address).

Take notice, that Mr. of , one of the medical referees under the Act, has been appointed to examine you in accordance with the application made.

You are hereby required to submit yourself for examination by him [add where workman is in a fit condition to travel] and to attend for that purpose at such time and place as may be fixed by him.

Dated

Signature

Sheriff-Clerk of

FORM VI

Form of Notice of Application by Workman intending to reside Abroad for reference to Medical Referee under Schedule I, paragraph 18, of the Act, and Act of Sederunt, sec. 16 (2).

Workmen's Compensation Act, 1906

Sheriff Court of _____ at _____

A. B., Claimant, v. C. D., Respondent.

Take notice, that A. B., now residing at _____, to whom under a *Memorandum* [or] *Award* [or] *Certificate*, recorded on _____, a weekly payment of _____ is payable by the said _____, intends to cease to reside in the United Kingdom.

The said A. B. craves the Court to refer to a medical referee the question whether the incapacity of the said A. B. resulting from the injury is likely to be of a permanent nature.

Dated _____

Signature

(of Applicant or Applicant's Agent.)

To the Sheriff-Clerk of
Court House.

FORM VII

*Form of Reference by Sheriff-Clerk to Medical Referee under
Schedule I., paragraph 18, of the Act, and Act of Sederunt,
sec. 16 (4).*

Workmen's Compensation Act, 1906

Sheriff Court of _____ at _____.

A. B., *Claimant, v. C. D., Respondent.*

On the application of A. B., now residing at _____ (a copy of which is hereto annexed), reference is hereby made to _____ of _____, a medical referee under the said Act, to examine the said _____, and to give his certificate as to whether the incapacity of the said _____, resulting from the injury, is likely to be of a permanent nature.

The said _____, who is now at _____, has been directed to submit himself for examination.

The said _____ is in a fit condition to travel, and has

been directed to attend for examination at such time and place as may be fixed by the referee.

[or]

The said does not appear to be in a fit condition to travel.

The referee is requested to forward his certificate to the Sheriff-Clerk of at , on or before the day of , specifying therein the nature of the incapacity of the said , and whether the same is likely to be of a permanent nature.

Dated .

Signature ,

Sheriff-Clerk of .

FORM VIII

Form of Certificate of Identity (Act of Sederunt, sec. 16 (7) (c))

(To be printed on thick blue foolscap)

Workmen's Compensation Act, 1906

TO BE CAREFULLY PRESERVED

No. of Certificate .

Notice.—This Certificate is no security whatever for a debt.

Sheriff Court of at .

A. B., Claimant, v. C. D., Respondent.

This is to certify that A. B. , late of (*address and description*), is entitled to a weekly payment of from (*name and address of employer*) as compensation payable to the said A. B. in respect of personal injury caused to him by accident arising out of and in the course of his employment, such weekly payment to continue during the total or partial incapacity of the said A. B. for work; and that the description of the said A. B. and his incapacity for work, as certified by the medical referee appointed under the said Act, are as follows:—

Age

Height

Hair

Eyes

Nature of incapacity.—(*Describe the nature of incapacity and*

whether the same is likely to be of a permanent nature, as in certificate of medical referee.)

Dated

Signature

Sheriff-Clerk of

FORM IX

Form of Notice to be given by Sheriff-Clerk to Workman intending to reside Abroad (Act of Sederunt, sec. 16 (7) (d))

Workmen's Compensation Act, 1906

Sheriff Court of

at

A. B., *Claimant*, v. C. D., *Respondent*.

To A. B. (*address and description*.)

Take notice, that if you desire to obtain payment of the weekly payments payable to you under the *Award* [or] *Memorandum* [or] *Certificate* hereto annexed, while you are residing out of the United Kingdom, you must at intervals of three months from the date up to which such payments have been made, submit yourself to examination by a medical practitioner in the place where you are residing, and produce to him the copy of the certificate of the medical referee, and the certificate of identity hereto annexed; and you must obtain from such medical practitioner a certificate in the form hereto annexed that he has examined you, and that your incapacity resulting from the injury specified in the certificate of the medical referee continues; and such certificate must be verified by the medical practitioner by declaration in your presence before some such person as hereinafter mentioned.

You must also attend before some such person as hereinafter mentioned, and make a declaration in the form hereto annexed that you are the same person as mentioned in the copy of the certificate of the medical referee and in the certificate of identity hereto annexed, and in the certificate of the medical practitioner by whom you have been examined, producing to such person the copy and certificates above mentioned.

You must then transmit to me at my office, situated at, the certificate of the medical practitioner by whom you have been examined, and your declaration, together with a request for transmission to you of the amount of the weekly payment due to you, specifying the place where and the manner in which the amount is to be transmitted, according to the form hereunto annexed, which request must be signed in your own handwriting.

FORM XI

*Form of Declaration of Identity by Workman residing out of the
United Kingdom (Act of Sederunt, sec. 16 (7) (d) and (9))*

Workmen's Compensation Act, 1906

Sheriff Court of _____ at _____.

A. B., Claimant, v. C. D., Respondent.

I, A. B. _____ of _____, hereby declare that I am the same person as A. B. _____ of _____ described in the copy of the certificate of the medical referee in the abovementioned proceedings, dated the _____ day of _____, now produced by me, and in the certificate of identity, dated the _____ day of _____, now produced by me, and the same person as A. B. _____ of _____, described in the certificate of _____ declared by the said _____ in my presence on the _____ day of _____, *and now produced by me.*

[Signature of Claimant.]

Declared at this day of
the certificates above mentioned being at the same time produced.

Before me

[Signature and description of person
before whom the declaration is made.]

FORM XII

Form of Request for Transmission of Weekly Payments by Workman residing out of United Kingdom (Act of Sederunt, sec. 16 (10))

Workmen's Compensation Act, 1906

Sheriff Court of _____ at _____.

A. B., Claimant, v. C. D., Respondent.

Sir,—I herewith enclose medical certificate and declaration of identity, and request that the amount of the weekly payments due to me in the above-mentioned proceedings may be transmitted to me at (*here give full address and state how transmission is to be made as*), by *Post Office Order payable at* (*here give name of Post Office*)

[or]

in the year in which his tack is to determine, or forty days preceding any other term of Whitsunday thereafter: And upon production of such tack and horning duly executed to the Sheriff or Sheriff-Substitute of the shire where the lands lie, they are hereby authorised and required, within six days after the term of removal appointed by the tack, to eject such tenant, and to deliver the possession void to the setter, or those having right from him.

2. Where the tenant hath not obliged himself to remove without warning, in such case it shall be lawful to the heritor or other setter of the tack in his option, either to use the order prescribed by the Act of Parliament made in the year 1555, intituled "Act anent the Warning of Tenants," and thereupon pursue a warning and ejection, or to bring his action of removing against the tenant before the Judge Ordinary: And such action being called before the Judge Ordinary at least forty days before the term of Whitsunday, shall be held as equal to a warning execute in terms of the foresaid Act: And the judge shall thereupon proceed to determine in the removing in the terms of that Act, in the same manner as if a warning had been executed in terms of the foresaid Act of Parliament.

3. Where a tack is assigned and the assignation not intimated by an instrument, or where the lands are subset in whole or in part to subtenants, such horning execute as aforesaid, or where process of removing and decret is obtained, or where warning in terms of the Act 1555 is used against the principal or original tacksman, the same shall be effectual against the assignees or subtenants, one or more, and the action of removing against the principal or original tacksman, and decret of removing following thereon, shall be effectual against such assignees and subtenants as aforesaid, and shall be sufficient ground of ejecting them, anything in the former practice to the contrary notwithstanding.

4. Where a tenant has irritated his tack by suffering two years' rent to be in arrear, it shall be lawful to the setter or heritor to declare the irritancy before the Judge Ordinary, and to insist in a summar removing before him; and it shall be lawful to the Sheriff or Sheriff-Substitute to find the irritancy incurred, and to decern in the removing, any practice to the contrary notwithstanding.

5. Where a tenant shall run in arrear of one full year's rent, or shall desert his possession and leave it unlaboured at the usual time of labouring, in these, or either of these cases, it shall be lawful to the heritor or other setter of the lands to bring his action against the tenant before the Judge Ordinary, who is hereby empowered and required to decern and ordain the tenant to find caution for the arrears, and for payment of the rent for the five crops following or during the currency of the tack, if the tack is of shorter endurance than five years, within a certain time to be limited by the judge, and failing thereof, to decern the tenant summarily to remove, and to eject him in the same manner as if the tack were determined and the tenant had been legally warned in terms of the foresaid Act 1555.

6. Upon passing of any bill of suspension of a decret or pro-

cess of removing, or at least within ten days after the date of the deliverance thereon, the complainer shall be bound to find sufficient caution, not only for implement of what shall be decerned on the suspension upon discussing thereof, but also for damage and expense in case the same shall be found due; and upon the complainers failing to find caution as aforesaid, such bill of suspension shall be held to be refused, and it shall be lawful for the other party to proceed in his action of removing, or in the execution of his decret, as if no such bill of suspension had been presented or passed.

7. In all removings, whether originally brought before this Court, or by suspension, they will proceed and determine the same summarily without abridging the course of any roll.

CHAPTER XVI.—FIAR'S PRICES¹

1. *The Jury*

The Sheriffs of Scotland shall, yearly, betwixt the fourth and twentieth of February, summon before them a competent number of persons, living within the sherifffdom, who have knowledge and experience of the prices and trade of victual in these bounds, and from them choose fifteen men, whereof not fewer than eight shall be heritors, to pass upon the inquest, and return their verdict of the evidence under written, or their own proper knowledge concerning the fiars for the preceding crop, of every kind of victual, of the product of that sherifffdom.

2. *Witnesses and Evidence*

The said Sheriffs shall, to the same time and place unto which the jury is called, also summon the properest witnesses, and adduce them and all other good evidence before the said jury, concerning the price at which the several sorts of victual have been bought and sold, especially since the first of November immediately preceding, until that day; and also concerning all other good grounds or arguments from whence it may rationally be concluded by men of skill and experience what ought to be established as the just fiar prices for the said crop; and any person then present may in open Court, and no otherwise, and observing due order and respect, offer information to the jury concerning the premisses, and concerning the evidence adduced before them.

3. *Adjournment where Evidence Insufficient*

If it appears to the Sheriff or to the jury that the adducing of proper evidence has been any way disappointed, or that the evidence adduced is defective, the said Sheriff shall adjourn the jury

¹ See Act of Sederunt of 29th January, 1918, page 417 hereof.

till a certain and proper day, that sufficient evidence may then be laid before them.

4. *Verdict*

And the jury, being duly sworn before evidence be entered upon, when the same is concluded, shall be and remain enclosed till they have finished their verdict, which they shall return signed by their Chancellor and clerk, to the Sheriff at the time and place fixed for that purpose by the said Sheriff, when the said jury was enclosed.

5. *Application of Verdict*

The said Sheriffs shall, on or before the first day of March, pronounce and give forth sentence according to the said verdict, determining and fixing the fiar prices, for the crop preceding, of each kind of victual of the product of that sherifffdom.

6. *Fiars of Various Qualities of Victual*

And further, in such shires where the use and custom has been, or where it may now be found needful and convenient to strike different fiars according to the different qualities of the several sorts of victual; the said use, which experience has shown to be good and profitable, shall be continued or introduced by the several Sheriffs respectively, and the said different fiars shall be fixed and determined as the other fiars in manner above appointed.

7. *Extract and Dues of Extract*

All which fiars the said Sheriffs shall forthwith record in their books, and their clerks shall give extracts thereof to any person who asks the same, and that for payment of seven shillings Scots money, and no more, for the whole fiars of one year.

8. *Certificate of Fiars to be sent to Teind Clerk*

Every sheriff-clerk shall transmit to the teind clerk a certificate of the fiars of every year, within fourteen days after they have been struck.

BOOK M.—FEES AND EXPENSES IN INFERIOR COURTS

CHAPTER I.—FEES CHARGEABLE BY SHERIFF-CLERKS

Note.—Book M, chapter I., has been repealed by Act of Sederunt of 22nd February, 1922, printed on page 423.

CHAPTER II.—FEES OF AGENTS AND OTHERS ¹*(Sheriff Courts (Scotland) Act, 1907, 7 Edw. VII. c. 51, sec. 40)*

GENERAL REGULATIONS

1. *Two Scales of Taxation*

In the ordinary Sheriff Court, except as after stated, there shall be two scales of taxation, viz. *first*, for causes where the amount of principal concluded for does not exceed £50; and *second*, for causes exceeding that amount. In all cases the Sheriff may appoint that expenses shall be subject to modification.

2. *Fixing of Scale*

(1) The scale for taxation shall in the ordinary case be determined by the principal sum concluded for, but in all cases it shall be competent to the Sheriff to direct that the expenses shall be taxed according to the scale applicable to the amount decerned for.

(2) In cases where the principal sum concluded for does not exceed £50 it shall be competent to the Sheriff to direct taxation on the higher scale, if he shall be of opinion that such sum does not truly represent the nature and importance of the cause.

(3) In actions of damages, the scale for taxation of the account between party and party shall for the pursuer's agent be regulated by the sum decerned for, unless the Sheriff shall otherwise direct.

(4) Where the demand made does not exceed the value which may be competently concluded for in the Small Debt Court, small debt expenses only shall be allowed, unless the Sheriff shall otherwise appoint.

(5) Where the principal amount decerned for does not exceed £20 the Sheriff may allow small debt expenses only.

3. *One Scale in certain Proceedings*

In jury trials, mercantile sequestrations, *cessio* proceedings, and executry business, there shall be one scale of taxation only, unless where otherwise hereinafter stated.

4. *Scale I., where Rent under £50*

In ordinary removings and ejections the scale of expenses shall be determined by the amount of the rent per annum. When the rent is not set forth as exceeding £50, the charges shall be according to Scale I.

5. *Where Value Indeterminate*

In all actions where the pecuniary amount or value of the

¹ See as to alteration on these fees by Act of Sederunt printed on page 430.

question in dispute cannot be ascertained from the process, the Sheriff shall determine according to which scale the account shall be taxed.

6. Discretion of Sheriff

In causes of great importance, or requiring much special preparation, it shall be in the discretion of the Sheriff to allow for a debate a higher fee than is allowed in the Table, but not exceeding £7, 7s.; and that either by a direction in the interlocutor disposing of the cause, or by a special interlocutor following on a motion by the party found entitled to expenses. Where such a fee is allowed, a similar fee shall be chargeable by each agent in the cause against his own client.

7. Small Debt Court

In the Small Debt Court there shall be only one scale of taxation. When a case is remitted from the Small Debt to the Ordinary Court the fees thereafter chargeable by the agents shall be as specified in Scale I. of the Ordinary Court expenses.

8. Party and Party, Agent and Client

This Table of Fees shall regulate the taxation of accounts, as well between agent and client as between party and party, but with this distinction, that where, as between party and party, general charges of limited amount, such as "taking instructions" at the commencement of a case, "instructions for precognition," and "process fee" only are stated, it shall be in the option of the agent, as against his client, to substitute for these general fees detailed charges for all necessary business in connection with the case, the rates of charge being regulated by this table.

9. Expenses Preliminary to Proof

The expenses to be charged against an opposite party shall be limited to proper expenses of process, without any allowance (beyond that specified in the Table) for preliminary investigations, subject to this proviso, that precognitions, plans, analyses, reports, and the like (so far as relevant and necessary for proof of the matters in the record between the parties), although taken or made before the raising of an action or the preparation of defences, or before proof is allowed, and although the case may not proceed to trial or proof, may be allowed where eventually an interlocutor allowing a proof shall be pronounced.

10. Sheriff may Disallow Irregular or Unnecessary Charges

In order that the expenses of litigation may be kept within proper and reasonable limits, only such expenses shall be allowed,

in taxing accounts between party and party, as are necessary for conducting it in a proper manner, with due regard to economy. And it shall be competent to the Sheriff to disallow all charges for papers or parts of papers or particular procedure or agency which he shall judge irregular or unnecessary.

11. *Expenses of Unsuccessful Portion of Procedure*

Notwithstanding that a party shall be found entitled to expenses generally, yet if, on the taxation of the account, it shall appear that there is any particular part of the litigation in which such party has proved unsuccessful, or that any part of the expense has been occasioned through his own fault, he shall not be allowed the expense of such parts of the proceedings.

12. *Expenses Caused by Non-appearance or Abandonment*

Whenever an agent on one side attends any diet of proof, or debate, or any meeting ordered by the Sheriff, and the other is absent, or not prepared to proceed, the Sheriff shall have power to decern against the opposite party for payment of such expenses as the Sheriff may consider reasonable. If an appeal be abandoned, or any debate on preliminary pleas or otherwise ordered by the Sheriff be departed from by any party, and notice to that effect be given to the opposite party at least three lawful days before the date fixed for the hearing, no debate fee shall be allowed; but, failing such notice, a debate fee shall be allowed to the respondent's or other party's agent equal to one-half of the fee which would have been allowed had the debate proceeded.

13. *Expense of Remit to Reporter*

When a remit shall be made by the Court regarding matters in the record between the parties to an accountant, engineer, or other reporter, the agents shall not, without special agreement, be personally responsible to the reporter for his remuneration, the parties alone being liable.

14. *Liability of Poor's Agents*

Agents acting for parties on the poor's roll shall not be liable for the charges or allowances to witnesses, sheriff-clerks, auditors, shorthand writers, sheriff officers, or bar officers, unless they are recovered by the agent personally.

15.

References in any statute or Act of Sederunt to the fees allowed in the Act of Sederunt of 4th December 1878 shall be held as referring to the fees allowed in the like circumstances in the Table of Fees annexed hereto.

TABLE OF FEES

Chapter I.—General Business in Sheriff Courts

	Scale I. Not exceed- ing £50.	Scale II. Above £50
1. Taking Instructions to conduct case of pursuers or defenders, including obtaining deliverance, borrowing and returning initial writ or petition, certifying same, entering or enquiring for appearance, making up interlocutor sheets and inventory of process and productions lodged with initial writs or petitions, and lodging same, and attendance at tabling or enrolment of case or at first diet in case, or getting endorsement on initial writ where no appearance entered . . .	From £0 13 4 to 1 11 6	From £1 1 0 to 2 2 0
2. Drawing Papers (the sheet throughout this Table to consist of 250 words or numbers).		
(1) Petitions, initial writs, counter-claims, condescendences, defences, answers, commissions, diligences against witnesses or havers, motions, minutes, specifications of documents, reclaiming petitions and answers, precognitions (including precognitions of parties), affidavits, caveats, statutory notices, and generally all necessary papers, per sheet . . .	0 4 0	0 6 0
(2) Figured statements, per sheet . . .	0 6 0	0 8 0
(3) Inventories or productions not lodged with initial writ or petition, per sheet . . .	0 2 0	0 3 0
(4) Framing (including fair copy) and lodging a caveat . . .	0 6 8	0 10 0
(a) Papers shall be confined as closely as possible to statements of fact, but reference may be made where necessary to the record and to authorities cited, as well as to proofs, deeds, writings or correspondence produced, without the same being quoted at length; and if in any paper produced in a cause quotations of any kind exceeding one page each in length shall be made, the same shall be chargeable only at the rate of copying instead of drawing fees.		

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
3. Revising Papers where revisal ordered. One-half drawing fees.		
4. Copying Papers, including productions and precognitions, copy of the record, for the use of the Sheriff, and copy correspondence when necessary or adjusted.		
Written or typewritten copies—		
(1) In English, per sheet	£0 1 0	£0 1 6
(2) In any other language, per sheet	0 1 6	0 2 0
(3) Figured States and Accounts, includ- ing account sued for, endorsed upon or attached to initial writ, and accounts of expenses, per sheet	0 1 6	0 2 0
(4) For each copy after the first through- out this Table, per sheet	0 0 6	0 0 9
(a) A full copy shall be allowed of the record and interlocutors, and also of the proof and produc- tions so far as necessary for the efficient conduct of the cause, and a further copy of the record up to the date of closing for the use of the Sheriff. In addition, a copy of every inter- locutor disposing of questions of fact or law shall be allowed for the client.		
5. Printing.		
(1) Instructing printer	£0 2 6	£0 3 4
(2) Revising proof, not exceeding 5 pages	0 3 4	0 5 0
(3) For every additional 5 pages	0 1 8	0 2 6
(a) Where more than 5 copies of paper are necessary, the same shall be printed, and, if not printed, the charges for 5 copies only shall be allowed by the Auditor, or, in the option of the agent, a sum equivalent to the cost of printing.		
6. Instructions to Messengers and Officers.		
Instructing messenger or officer to serve, execute, or intimate the various kind of writs or diligence, including the examination of executions.		
(1) For the first party on whom service or intimation is made	£0 2 6	£0 3 4
(2) For every other party	0 0 6	0 0 6
7. Citation of Witnesses.		
Making copy interlocutor fixing diet of proof or trial for citation of witnesses, and getting same certified by clerk of Court	0 3 4	0 5 0

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
8. Productions.		
Where productions are lodged at any time other than at the tabling of a case, or at a diet of trial, or proof, lodging the same	£0 2 0	£0 2 6
9. Closing of Record.	From	From
Preparing for and attendance at closing of record, including examination of pleadings and productions	0 10 6 to 1 1 0	1 1 0 to 2 2 0
10. Precognitions.	From	From
Instructions for precognitions	0 13 4 to 1 1 0	1 1 0 to 1 11 6
(a) In addition, reasonable travelling and personal expenses shall be allowed as for the nearest local agent, but no charge shall be allowed for journeys and attendances over and above the instruction fee.		
(b) No charge shall be allowed for precognitions of witnesses not examined, in the absence of a good and valid reason for such non-examination, and at the audit all precognitions charged shall be produced.		
(c) Each agent shall be entitled to charge for a full copy for his own use of the precognitions necessarily taken.		
(d) Where a skilled witness prepares his own precognition or report, the agent shall be allowed half drawing fees for revising and adjusting it.		
11. Proof, etc.	From	From
(1) Preparing for proof	£0 13 4 to 1 1 0	£1 1 0 to 1 11 6
(2) Attendance at and conducting proof before Sheriff or Commissioner, per hour (in addition to debate fee)	0 6 8	0 10 0
12. Attendances.		
(1) If at the Court or in the town or place where the agent practises or its neighbourhood, not exceeding half an hour	0 5 0	0 6 8
Exceeding half an hour but not exceeding an hour	0 6 8	0 10 0
For every half-hour thereafter . .	0 3 4	0 5 0
(2) If at a distance therefrom, for the time occupied in such business		

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
and in travelling, at a rate not exceeding, for a whole day . . .	£3 3 0	£4 4 0
(3) Besides reasonable travelling charges and also an allowance for maintenance, the latter at a rate not exceeding, per day . . .	1 1 0	1 11 6
(a) Where the business can be properly performed by a local agent, the Auditor shall only allow such expenses as would have been incurred if it had been done by the nearest local agent, including reasonable fees for instructing him.		
(4) Attendance at a visitation or inspection ordered by the Court; or on an accountant or other person to whom a remit has been made; or making searches of any of the public records, not exceeding an hour . . .	£0 6 8	£0 10 0
For every half-hour thereafter . . .	0 3 4	0 5 0
(b) Where a diet (other than a proof or debate) is continued only one attendance shall be chargeable.		
(5) Attendance lodging application and procuring deliverance on any application where a special warrant, other than a warrant of service, is procured, <i>e.g.</i> interim interdict or sequestration . . .	£0 5 0	£0 6 8
Allowance for time of clerk necessarily occupied—		
(6) If in town or place where agent practises, or its immediate neighbourhood, per hour . . .	0 3 4	0 5 0
(7) At a distance, per day . . .	1 1 0	1 11 6
(8) In addition, reasonable travelling charges and personal expenses, the latter not exceeding, per day . . .	0 15 0	0 15 0
(9) Attendance on a reporter with proceedings and getting him to accept remit . . .	0 3 4	0 5 0
(10) Attendance on commissioner or reporter fixing diet of proof or examination of havers and intimating same to opposite agent, and writing certificate of intimation . . .	0 5 0	0 6 8
(11) Attendance on reporter or commissioner, getting up his report with productions, etc., and paying his fee . . .	0 3 4	0 5 0

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
13. Correspondence, etc.		
(1) Each letter, not exceeding one page of 125 words	£0 2 0	£0 3 4
(2) Exceeding one page and not exceeding two	0 3 4	0 5 0
(3) For each page, or part of a page, beyond two	0 1 6	0 2 6
(4) Formal letters (such as intimating a diet or transmitting a paper) to be charged, each	0 1 0	0 1 6
(5) Each telegram and telephone (including transmitting and any letter confirming)	0 3 4	0 5 0
(6) Framing each circular	0 2 0	0 3 4
(7) Each copy thereof	0 1 0	0 1 0
(a) To be printed if found to be less expensive than copying.		
(8) Addressing and despatching circulars, not exceeding 20	£0 1 6	£0 2 0
(b) If more in number, at same rate.		
(9) Ordering advertisements, etc., each paper, including settlement of newspaper account	0 2 0	0 3 4
14. Miscellaneous.		
(1) Instructing medical man to report on party's injuries to enable action to be raised	0 3 4	0 5 0
(2) Taking protestation for not enrolling or insisting in the action	0 2 6	0 3 4
(3) Where a party has been ordered to find caution or to sist a mandatory, enquiring if such has been done	0 2 6	0 3 4
(4) Taking out bond of caution, getting it signed, and returning it to clerk of Court	0 3 4	0 6 8
(5) Procuring bond attested where necessary	0 2 0	0 3 4
(6) Enrolling motion and intimating same to opposite agent, where only one agent	0 1 6	0 2 6
(7) For each other agent	0 0 6	0 0 6
(8) Where a paper, document, or article is ordered or required to be lodged. Enquiring if the same has been done. Only to be charged once	0 2 0	0 2 6

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
(9) Lodging the same, and productions made therewith	£0 2 0	£0 2 6
(10) Borrowing and returning a process of not more than 40 numbers	0 1 6	0 2 3
(11) Above 40 and not exceeding 100	0 3 0	0 4 6
(12) Above 100	0 4 6	0 6 0
(a) If only a part of a process is borrowed, the charge to be according to the number of parts borrowed.		
(13) Ordering a caption for the return of a process and intimating same to opposite agent	£0 2 6	£0 3 4
(14) If the process is not returned after intimation by the clerk of Court, procuring caption and instructing officer to execute	0 2 6	0 3 4
(b) When the caption is enforced, the above fees to be paid by the party against whom it is directed, with the clerk of Court and officer's fees, the several fees being printed or marked on the back of the caption.		
(15) Meeting with opposite agent and adjusting correspondence to be lodged in process, charge as in section 12 (1).		
(16) Lodging same	£0 2 0	£0 2 6
(17) For meetings and correspondence between the agents leading up to a settlement by joint minute, the Auditor shall allow such reasonable charges as the circumstances of the case may warrant, besides the drawing or revising fees of the minute.		
(18) Perusing and considering tender made and consulting with client as to its acceptance	0 6 8	0 10 0
(19) Perusing and considering specification of documents called for, and motion to approve of same	0 5 0	0 6 8
(20) Where, after specification approved of, parties agree as to the documents to be produced without the necessity of appearing before the Court or a commissioner, charges to be allowed for meetings and correspondence as per sections 12 (1) and 13.		

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
(21) Instructing architect to make plan, or a photographer to take photo- graph, and examining same; also instructing skilled witnesses where certified by the Court, for each witness	£0 6 8	£0 10 0
(c) No allowance shall be made for preparing plans or photographs lodged in process except such as are either ordered or prepared by mutual arrangement of parties, or proved and put in at the trial or proof, or subsequently sanctioned by the Court.		
(22) Lodging reports	£0 2 0	£0 2 6
(23) Perusing and considering reports	0 5 0	0 6 8
(24) Procuring the authentication of an interlocutor or order of the Court, where same necessary	0 2 6	0 3 4
(25) Noting any interlocutor or order (other than formal) not pro- nounced in presence of parties or their agents	0 2 6	0 3 4
(26) Ordering and examining letters of second diligence	0 3 4	0 5 0
(27) Instructing shorthand writer to attend at trial or proof, or at a diet before a commissioner, including settling account	0 2 6	0 3 4
(28) Enquiring as to cause at avizan- dum	0 2 6	0 3 4
(d) This only to be once allowed for each time at avizandum.		
(29) Lodging minute of reference to oath and intimating same when necessary	£0 2 0	£0 2 6
(30) Agency settling witnesses' fees, not to exceed	0 6 8	0 10 0
(31) Obtaining concurrence of Pro- curator-Fiscal	0 2 6	0 3 4
(32) Enquiring if appeal lodged	0 2 6	0 3 4
(33) Marking appeal to the Sheriff or Court of Session	0 2 6	0 3 4
(34) Instructing Edinburgh agent to attend to appeal, and sending documents connected therewith	0 6 8	0 10 0
15. Debates.		
(1) Debating case on preliminary pleas, or on question of procedure or interim interdict when debate ordered by the Court	From 0 10 6 to 1 11 6	From 1 1 0 to 2 12 6

(a) If, however, the whole case is decided on the debate, fees under (2) to be allowed.

	Scale I. Not exceed- ing £50. From	Scale II. Above £50. From
(2) Debating case on merits	£1 1 0 to 2 2 0	£2 2 0 to 4 4 0

(b) Where all the agents engaged in a case have to travel more than five miles to the Court of Appeal in the same county from the Court where the case was tried, an additional allowance of 10s. while engaged in travelling, besides outlays, to be made to each agent.

16. Where Counsel employed.

(a) The following fees to be allowed as judicial costs where the employment of counsel is sanctioned, but even when sanctioned, instructions to counsel, unless in cases of exceptional importance (such as a test case), to be limited in party and party taxation to appearances in Court.

Instructing Counsel—

- | | | |
|--|--------|--------|
| (1) Letter or attendance, with fee of £1, 1s. or £2, 2s. | £0 5 0 | £0 6 8 |
| (2) Exceeding £2, 2s. and not exceeding £5, 5s. | 0 6 8 | 0 10 0 |
| (3) Exceeding £5, 5s. | 0 10 0 | 0 13 4 |
- Revising papers drawn by counsel. The charge to be according to the length of the papers as finally lodged.
- | | | |
|--|--------|--------|
| (4) Not exceeding ten sheets, each sheet | £0 1 0 | £0 1 0 |
| (5) Each sheet thereafter | 0 0 6 | 0 0 6 |
- (6) Attending diet of trial or proof or commission, and diet of debate with counsel, charges as in section 12 (1).
- | | | |
|---|-------|-------|
| (7) Copy record and production so far as necessary for counsel, per sheet | 0 1 0 | 0 1 6 |
|---|-------|-------|
- (8) Consultation with counsel before trial or proof, charges as in section 12 (1).

(b) Only one consultation in course of case to be included in judicial costs; but where counsel employed both before Sheriff-Substitute and on appeal before Sheriff-Principal and there is a second consultation, fee therefor to be chargeable by the agent against his client.

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
17. Process Fee.		
This fee to cover all consultations between agent and client during the progress of the cause, and all communications written or verbal passing between them .	From £0 10 6 to 1 1 0	From £1 1 0 to 2 2 0
18. Extracts.		
Ordering, procuring, and examining extracts, interim or otherwise .	0 3 4	0 6 8
19. Personal Diligence.		
(1) Recording execution of charge	0 2 6	0 3 4
(2) Procuring fiat	0 2 0	0 3 4
(3) Instructing apprehension	0 3 4	0 5 0
(4) Framing state of debt and attend- ance at settlement	0 5 0	0 6 8
20. Sales.		
(1) Reporting sales under pointings or sequestrations, or any other judicial sales, including approval of roup roll	0 2 6	0 3 4
(2) Obtaining warrant to pay	0 3 4	0 5 0
(3) Instructing auctioneer or officer to conduct sale and perusing report .	0 5 0	0 6 8

Chapter II.—Jury Trials

(1) Drawing and intimating motion (including copy) to have cause tried by jury	...	0 6 8
(2) Attendance before Court discuss- ing question of fact to be sub- mitted to jury, charges as in Chapter I., section 12 (1).		
(3) Lodging inventory of documents	...	0 2 6
(a) No charge to be allowed for productions made in course of trial.		
(4) Making copies for use of Sheriff, agents, and jury of questions of fact proposed	...	£0 10 0
(5) Attendance at and conducting trial, at rate per whole day of	...	4 4 0
(6) If motion for application of verdict not made at close of trial, then lodging and intimating motion to apply verdict	...	0 3 4

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
(7) Making motion to apply verdict . . .	...	£0 6 8
(8) Ordering and uplifting extract . . .	...	0 6 8

(b) Notes as to similar work in ordinary cases to apply. If the verdict is for less than £50 only half of the foregoing fees to be allowed as judicial costs.

Chapter III.—Mercantile Sequestrations

(1) Taking instructions to apply for sequestration and writing mandate . . .	...	£0 10 0
(2) Obtaining deliverance on petition . . .	...	0 6 8
(3) Drawing abbreviate of sequestration, and getting same entered in register of inhibitions . . .	...	0 10 0
(4) Drawing advertisement for <i>Gazette</i> , per sheet . . .	...	0 6 0
(5) Instructing insertion . . .	...	0 3 4
(6) Attending meeting of creditors and of trustee and commissioners, for first hour . . .	...	1 1 0
(7) For every hour after . . .	...	0 10 6
(8) Writing minutes of meeting where not written during meeting, per sheet . . .	...	0 6 0
(9) Writing minutes of meeting where written during meeting, per sheet . . .	...	0 2 0
(10) Lodging process with sheriff-clerk and obtaining deliverance declaring election of trustee and commissioners . . .	...	0 6 8
(11) Taking out bond of caution for trustee, and getting it signed, and lodging same . . .	...	0 10 0
(12) Taking out act and warrant, and transmitting same to Accountant in Bankruptcy . . .	...	0 10 0
(13) Drawing abbreviate for register of adjudications, and copying and recording same . . .	...	0 10 0
(14) Engrossing proceedings in Sederunt Book, per sheet . . .	...	0 1 6

(a) No charges shall be allowed for making engrossments in the Sederunt Book after the confirmation of the trustee.

- (b) All other charges in sequestrations to be at the same rate for similar or analogous work under Scale II. for general business. Attendance at examination of bankrupt and other parties to be charged as in Chapter I., section 12 (1).

Chapter IV.—Cessio Proceedings

Chapter V.—Executory Business

(So far as not falling under this Chapter, to be charged under Scale II.)

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
(1) Presenting petition for decree-dative and directing publication . . .	...	£0 6 8
(2) Attendance in Court moving for decree-dative . . .	...	0 6 8
(3) Agency making the necessary preliminary investigation in order to ascertain the particulars and value of the intestate moveable estate passing on death, and the debts and incumbrances affecting the estate, including correspondence, attendances, perusal of deeds and other documents, and obtaining valuations.		
(A) On small estates under the Small Estates and Finance Acts up to £500.		
Not exceeding £100 . . .	...	0 10 6
Above £100 and not exceeding £300 . . .	...	1 1 0
Above £300 and not exceeding £500 . . .	...	1 11 6

This fee shall cover all trouble up to and inclusive of procuring confirmation.

(B) On estates—		
Above £500 and not exceeding £1500 . . .	...	£2 2 0
Above £1500 and not exceeding £3000 . . .	...	3 3 0
Above £3000 and not exceeding £5000 . . .	...	4 4 0
Above £5000 and not exceeding £7000 . . .	...	5 5 0

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
Above £7000 and not exceeding £10,000	...	£6 6 0
Above £10,000 and not exceeding £15,000	...	7 7 0
Above £15,000 and not exceeding £20,000	...	8 8 0
Above £20,000 and not exceeding £25,000	...	9 9 0
Above £25,000 and not exceeding £35,000	...	10 10 0
Above £35,000 and not exceeding £50,000	...	15 15 0
Above £50,000 and not exceeding £75,000	...	21 0 0
Above £75,000 and not exceeding £100,000	...	26 5 0
Above £100,000 and not exceeding £150,000	...	36 15 0
and for each additional £50,000 or part of £50,000	...	10 10 0
with the option to the agent to charge for work in detail, but in that event no <i>ad valorem</i> fees for procuring confirmation shall be chargeable.		

- (C) On estate falling to be aggregated in respect of which duty is not payable by client, one-half of the above fees under (3) (B).

- (4) Preparing and giving up inventory, accounts, and relative schedules, affidavits, and abstracts and the other documents required to be lodged for payment of estate duty.

Drawing, per sheet	...	0 8 0
Extending	...	0 2 0

- (a) Correspondence with and attendances at Inland Revenue getting accounts passed and duties paid to be allowed in addition.

- (5) Confirmation of executor—For carrying through same, half of fees under (3) (B), but not to exceed £10, 10s.

- (6) Attendance with executor before Sheriff or Justice of Peace, when oath taken

... £0 6 8

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
(7) Taking out bond of caution, getting it signed, and lodging it with clerk of Court	...	£0 10 0
(8) Procuring attestation of cautioner's sufficiency	...	0 5 0
(9) Where caution found through the medium of a guarantee association for all the work connected therewith	...	1 1 0
(10) Fee on interlocutor on petition for restriction of caution ordering advertisement	...	0 6 8
(11) Drawing advertisement and copy	...	0 7 6
(12) Instructing advertisement	...	0 3 4
(13) Fee on interlocutor restricting or refusing to restrict caution	...	0 6 8

Chapter VI.—Accounts of Expenses

(1) Framing account of expenses, per sheet	£0 1 6	£0 2 0
(2) Lodging account of expenses with Auditor, getting diet fixed and intimating same, with copy of accounts to the opposite agent	0 3 4	0 5 0
(3) Perusing account of opposite agent, taking notes, and preparing for taxation	0 3 4	0 5 0
(4) Attending taxation, charges as in Chapter I., section 12 (1).		
(5) Lodging the account with the clerk of Court for approval	0 2 0	0 2 6
(6) Noting the approval thereof	0 2 0	0 3 4
(7) Preparing and lodging note of objections to the Auditor's report	0 5 0	0 10 0
(8) Attendance discussing same, charges as in (4).		

Chapter VII.—Small Debt Cases

(1) Uncontested cases—if Sheriff allows fees.		
Taking out summons and drawing claim where that necessary, making copy, and attendance at calling	...	0 5 0
(a) Where the case is settled before calling, two thirds of the above fee may be authorised against the defenders.		

- | | Scale I.
Not exceed-
ing £50. | Scale II.
Above
£50. |
|--|-------------------------------------|----------------------------|
| (2) Contested cases—if Sheriff allows fees. | | |
| Fees as in (1), and for conduct of the case, per hour | ... | £0 5 0 |
| (b) Cases shall be considered contested only where the defender appears or is represented, and states a defence. | | |
| (3) Where a case is remitted to the ordinary Court roll, there shall be allowed to cover the procedure anterior to the remit a fee not exceeding | ... | £1 1 0 |
| (4) When a case is remitted under Rule 61 of the Sheriff Courts Act, 1907, to be dealt with under the provisions of the Small Debt Acts, there shall be allowed for the trial of the case to cover all trouble thereafter a fee of | ... | 1 1 0 |
| (5) Fees of diligence in terms of Scale I. of sections 6 and 19 of Chapter I. so far as applicable to diligence. | | |
| (c) Unless where the case is transferred to the ordinary roll, or the Sheriff shall otherwise order, judicial fees, if allowed, shall not exceed one-fifth of the sum sued or decerned for, but with a minimum fee of 2s. 6d. in uncontested cases and 7s. 6d. in contested cases. Necessary outlays also to be allowed. | | |
| (d) In all cases it shall be in the power of the Sheriff, if he shall think proper, to allow a fee not exceeding five shillings per hour for taking instructions and seeing witnesses; and in very special cases he may allow a fee to the successful party not exceeding two guineas for the conduct of the cause, and in that event the like fee shall be chargeable to his client by the agent of the unsuccessful party. | | |

Chapter VIII.—Fees to Clerks of Counsel

- | | | |
|--|-----|--------|
| (1) Where counsel's fee is £1, 1s. | ... | £0 2 6 |
| Where £2, 2s. to £4, 4s. | ... | 0 5 0 |
| Where £5, 5s. to £10, 10s. | ... | 0 7 6 |
| Where above £10, 10s., five per cent. on the amount. | | |

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
(2) For writing draft, per sheet . . .	...	£0 0 9
For writing opinion, including draft, fair copy, and booking, per sheet .	...	0 1 6

Chapter IX.—Shorthand Writers' Fees

(1) Attending at trials, proofs, and com- missions where notes extended, per hour	...	0 5 0
(2) Attending at trials, proofs, and com- missions where notes not ex- tended, per hour	...	0 6 8
(3) Besides reasonable travelling ex- penses where necessary.		
(4) Extending notes, per sheet	...	0 1 6

Chapter X.—Witnesses' Fees

	From
(1) Labourers, mechanics, servants, jour- neymen, etc., per day, according to circumstances	£0 5 0 to 0 7 6
(2) Tradesmen, shopkeepers, innkeepers, clerks, farmers, manufacturers, auctioneers, etc., per day, accord- ing to circumstances	From 0 10 0 to 1 1 0
(3) Gentlemen, merchants, bankers, clergymen, etc., per day	1 1 0
(4) Professional persons, such as writers or solicitors, accountants, phy- sicians, surgeons, eminent archi- tects, civil engineers, surveyors, etc., per day	2 2 0
(5) Women. The above classification and scale of fees shall apply to women as well as men.	

(a) Where less than a day is occupied, a correspond-
ing reduction shall be made in the fees allowed.

(b) Where it is necessary to employ skilled persons to
make investigations prior to a proof or trial in
order to qualify them to give evidence thereat,
charges shall be allowed for the trouble and
expenses of such persons, of such amount as
shall appear fair and reasonable, provided that
the judge who tries the cause shall, on a
motion made either at the proof or trial, or
when leave is asked to abandon the case, or
within eight days after the date of any inter-

locutor disposing of the case, certify such skilled persons for such charges.

- (c) Witnesses shall be allowed at the above rates for the time necessarily occupied by them in going to, remaining at, and returning from the place of trial or proof, besides reasonable travelling charges according to their rank and station in life.
- (d) Charges for witnesses present at a trial or proof, but not examined, nor held as concurring with a witness who has been examined, may be allowed, provided a motion to that effect is made at the close of the proof, and the Court, then or subsequently, grants the same, and the witnesses' names are noted. Unless this is done the Auditor shall disallow any charges made for such witnesses.
- (e) The witnesses' fees stated in this table do not apply to witnesses in small debt cases not sent to the ordinary roll; in such cases the Sheriff, or, failing his doing so, the sheriff-clerk, shall fix the witnesses' fees.
- (f) The charges for witnesses to be stated in the body of the account in a lump sum, and the details of the charges to be stated in a separate schedule appended to the account, as follows :—

Witnesses' Names and Designations.	Where from.	Number of days charged.	Rate per day.	Total sum charged.	Taxed off by Auditor.
.....					
.....					

Receipts or vouchers for all the sums stated as paid to witnesses to be produced to the Auditor at the taxation.

Chapter XI.—Auditors' Fees

- (1) Decrees in absence £0 2 6
- (2) Cases where appearance entered.
- Where the amount of the account as submitted
- | | |
|-------------------------------|--------|
| is under £5 | 0 2 6 |
| £5 and under £20 | 0 5 0 |
| £20 and under £50 | 0 7 6 |
| £50 and under £75 | 0 10 0 |
| £75 and under £100 | 0 15 0 |
| £100 and under £150 | 1 1 0 |
| £150 and under £200 | 1 11 6 |

£200 and under £300	£2	2	0
For every additional £100 or part of £100	1	1	0

Chapter XII.—Procurator-Fiscals' Fees

For granting concurrence	0	3	4
------------------------------------	---	---	---

CHAPTER III.—FEES IN CIVIL BUSINESS FOR SHERIFF OFFICERS IN SCOTLAND¹*1. Citations and Attendances*

- | | | | |
|---|----|---|---|
| (1) Serving Petition, Complaint, Minute, Interlocutor, Warrant or Intimation, Charging on Decree or Extract Registered Protest, or using Arrestment, or Citing for Examination; for each of these several acts, including the return of execution | £0 | 2 | 6 |
| (2) Executing against more than one person on the same warrant when a separate execution not necessary, each copy after the first | 0 | 1 | 0 |
| (3) Citing a witness for ordinary Court | 0 | 1 | 6 |
| (4) Citing every other witness after the first, when only one execution necessary | 0 | 1 | 0 |
| The above to include short copies of citation and returning executions. | | | |
| (5) Attending the proof or examination of parties or witnesses—officer, for first hour | £0 | 2 | 6 |
| (6) For each hour or part of an hour thereafter | 0 | 1 | 6 |
| (7) Concurrents attending in like manner, for first hour, each | 0 | 1 | 6 |
| (8) For each other hour or part of an hour thereafter | 0 | 1 | 0 |

2. Brieves

- | | | | |
|--|---|---|---|
| (1) Publishing a brieve of service | 0 | 5 | 0 |
| (2) Attendance, first hour—officer | 0 | 2 | 6 |
| (3) Witness | 0 | 1 | 6 |
| (4) For each other hour or part of an hour thereafter, for officer and witness | 0 | 2 | 6 |

3. Poindings

- | | | | |
|---|---|----|---|
| (1) When the appraised value on an ordinary Court decree or extract registered protest does not exceed £5 | 0 | 5 | 0 |
| (2) Exceeds £5 but does not exceed £10 | 0 | 7 | 6 |
| (3) Exceeds £10 but does not exceed £20 | 0 | 12 | 6 |
| (4) Exceeds £20 but does not exceed £35 | 0 | 15 | 0 |
| (5) Exceeds £35 but does not exceed £50 | 0 | 17 | 6 |

¹ See Acts of Sederunt 22nd October, 1919, page 418, and 18th July, 1923, page 430.

- | | |
|---|--------|
| (6) Exceeds £50 but does not exceed £100 . . . | £1 5 0 |
| (7) Exceeds £100, then in proportional amounts as above for each additional £100 or part thereof, but in no case the charge to exceed £2. | |
| (8) Framing and extending Schedule and also execution, for each sheet of 250 words or part thereof | 0 1 0 |

4. *Sequestrations for Rent and Poidings of the Ground*

- | | |
|---|---------|
| (1) Inventorying sequestrated effects or moveables on a writ of poiding of the ground, and executing warrant to open when necessary, when the sum to be secured does not exceed £20 | £0 10 0 |
| (2) Exceeds £20 but does not exceed £50 | 0 15 0 |
| (3) Exceeds £50 but does not exceed £100 | 1 5 0 |
| (4) Exceeds £100, then in proportional amounts as above for each additional £100 or part thereof, but in no case the charge to exceed £2. | |
| (5) Extending inventory and execution, each per sheet | 0 1 0 |

5. *Ejections*

- | | |
|--|-------|
| (1) Ordinary—same fees as in sequestrations. | |
| (2) Summary—(a) Serving complaint | 0 2 6 |
| (3) (b) Ejecting each defender | 0 5 0 |

6. *Travelling, Detention, Outlays, etc.*

- | | |
|--|--------|
| (1) For each mile or part of a mile from the Court-house where warrant granted to the place of execution—officer | 0 0 8 |
| (2) Witnesses and appraisers, each | 0 0 6 |
| (3) For each hour or part of an hour after the first two that officer and witness or assistant are detained at a poiding, sequestration, or ejection, but not to exceed in all 15s. per day of eight hours | 0 2 6 |
| (4) Attending sale of sequestrated or poided effects as judge of roup | 0 12 6 |
| (5) For each hour or part of an hour after the first two | 0 2 6 |
| (6) Add outlays for locksmiths, etc. | |

7. *Small Debt Cases*

- | | |
|---|-------|
| (1) Serving summons, sist, or counter-claim | 0 1 6 |
| (2) Citing one witness | 0 1 0 |
| (3) Every other witness after the first | 0 0 9 |

(4) Postage in addition.			
(5) Charge or arrestment	£0	1	6
(6) Post copies under (1) and (5) when necessary, each	0	1	0
(7) Postage in addition.			
(8) Pounding or sequestration	0	3	6
(9) Sale	0	3	6
(10) Detention at a sale, waiting for furniture, etc., being removed, and seeing house properly secured, for every hour after the first two, officer and witnesses, but not to exceed in all 15s. per day of eight hours	0	2	6
(11) Any unnecessary delays.			
(12) Carrying back, same fees as in (8) to (11).			
(13) Executing warrant to open	0	1	6
(14) In addition to locksmith's fees.			
(15) Detention, fees as in (10).			
(16) Granting certificate of displenishment	0	1	0
(17) Enrolling for warrant to eject and re-let and intimating diet to defender	0	2	0
(18) Each extra copy	0	1	0
(19) Travelling, each mile or part thereof from Courthouse—officer	0	0	8
(20) Each assistant	0	0	6
(21) Arresting vessel	0	10	6
(22) Travelling, as in (19) and (20).			

8. Arresting Vessel

(1) Arresting vessel on ordinary Court warrant	1	1	0
(2) Travelling, as in 7 (19) and (20).			
(3) Detention, for each hour or part thereof after the first two	0	2	6
(4) Dismantling vessel	1	11	6
(5) With travelling and detention as above, and outlays for skilled artisans and boat hire.			

9. Apprehensions

(1) Executing warrant to apprehend and lodging in prison	1	1	0
(2) Detention, for each hour or part thereof after first two	0	2	6
(3) Outlays, cab or other fare when necessary, and maintenance.			
(4) Taking prisoner from prison to Court-house for examination	0	10	6
(5) While prisoner in custody, for each hour or part thereof after first two	0	2	6
(6) Travelling per mile or part thereof, officer and concurrent	0	2	6

GENERAL REGULATIONS

- (1) When the officer has to cross a ferry he will be allowed the necessary cost of the ferry, and, for mileage, to charge the breadth of the ferry and one-half more.
- (2) Where the officer can more expeditiously reach his destination by railway or other public conveyance, he will only be allowed, for himself and assistant or witnesses, for time occupied after the first two hours, including time of travelling :—
 - (1) Where within a radius of five miles from his place of business, per hour £0 3 6
 - (2) Where beyond such radius, per hour 0 5 0
besides necessary outlays.
- (3) In no case shall any officer be entitled (unless under special contract) to charge more than would be allowed to the officer nearest to the Court-house from which the warrant or authority upon which he acts is issued.

CHAPTER IV.—FEES OF TOWN-CLERKS AND KEEPERS OF
REGISTERS OF SASINES IN BURGHS

CHAPTER V.—FEES PAYABLE TO TOWN-CLERKS UNDER THE LICENSING (SCOTLAND) ACT, 1903, AND THE FEES PAYABLE TO THE CLERKS OF THE PEACE UNDER THE SAID LICENSING (SCOTLAND) ACT, OR OTHERWISE.

(Licensing (Scotland) Act, 1903 (3 Edw. VII. c. 25), sec. 27, sub-sec. (3))

IV. ACTS OF SEDERUNT AFFECTING THE SHERIFF
COURT PASSED SUBSEQUENTLY TO THE CODI-
FYING ACT OF SEDERUNT, 1913.

ACTS OF SEDERUNT AFFECTING PROCEDURE IN THE
SHERIFF COURT PASSED SUBSEQUENTLY TO THE
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ACT OF SEDERUNT TO AMEND C.A.S., BOOK L,
CHAPTER XIII. (PROCEEDINGS UNDER THE WORK-
MEN'S COMPENSATION ACT, 1906)

EDINBURGH, 6th July 1915.

The Lords of Council and Session, considering that it is advisable to amend in certain respects the provisions enacted by C.A.S., Book L, Chapter XIII., regulating proceedings under the Workmen's Compensation Act, 1906, do hereby, under and by virtue of the powers conferred by said statute, enact and declare that the following amendments are hereby made in said C.A.S., Book L, Chapter XIII., viz. :—

1. To subsection (*d*) of section 17 there shall be added the provision, "The note of the Sheriff if any explanatory of the grounds of his award shall be appended to the case."
2. The figures "1905" occurring in the second line of section 1 are hereby deleted and the figures "1906" are substituted therefor.
3. The word "of" occurring before the words "the Sheriff Clerk" in the sixth line of section 12 is hereby deleted and the word "or" is substituted therefor.
4. The word "principal" occurring before the words "clerk of the division" in the eleventh line of subsection (*e*) of section 17 is hereby deleted.

And the Lords appoint this Act to be entered in the Books of Sederunt, and to be printed and published in common form.

(Signed) STRATHCLYDE, *I.P.D.*

ACT OF SEDERUNT ANENT THE PROCEDURE IN
THE FIXING OF FIARS PRICES

EDINBURGH, 29th January 1918.

The Lords enact and declare: That in the present year, and in subsequent years until repeal of the present Act of Sederunt, the Sheriffs of Scotland may, in determining and fixing the fiar prices, dispense with the jury directed by the Codifying Act of Sederunt, L, xvi., and may notwithstanding the terms of the said last-mentioned Act of Sederunt, proceed to determine and fix the fiar prices on such evidence as seems to them proper and sufficient.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and to be printed and published in common form.

(Signed) STRATHCLYDE, *I.P.D.*

ACT OF SEDERUNT AMENDING C.A.S., BOOK M,
CHAPTER I., TABLE OF FEES, PART C, SECTION 1,
ANENT REMUNERATION OF BAR OFFICERS IN
SHERIFF COURTS

EDINBURGH, *16th July 1919.*

The Lords of Council and Session, considering that from circumstances arising out of the war the remuneration of Bar officers in the Sheriff Courts, in so far as it depends upon a fixed fee for each summons and sist in the Small Debt Court and for each summary removing and rehearing, has become inadequate, and that an increase should be authorised, do hereby amend Part C, section 1, of the Table of Fees in C.A.S., Book M, Chapter i., by deleting the figures "£0, 0s. 1d." therein, and inserting the figures "£0, 0s. 2d." in lieu thereof, and the said amendment shall take effect for one year from and after 31st July 1919.

And the Lords direct this Act to be inserted in the Books of Sederunt, and printed and published in common form.

(Signed) CHARLES SCOTT DICKSON, *I.P.D.*

ACT OF SEDERUNT AMENDING C.A.S., BOOK M,
CHAPTER III., ANENT FEES IN CIVIL BUSINESS
FOR SHERIFF OFFICERS IN SCOTLAND

EDINBURGH, *22nd October 1919.*

The Lords of Council and Session, considering that, from circumstances arising out of the late war, the Fees in Civil Business for Sheriff Officers in Scotland, prescribed by C.A.S., Book M, Chapter iii., have become inadequate, and that an increase thereon should be authorised: Do hereby amend said C.A.S., Book M, Chapter iii., by authorising an increase of 50 per cent. on all the fees prescribed therein, and the said amendment shall take effect for one year from and after 31st October 1919.

And the Lords direct this Act to be inserted in the Books of Sederunt, and to be printed and published in common form.

(Signed) STRATHCLYDE, *I.P.D.*

See Act of Sederunt, 18th July, 1923, page 430.

ACT OF SEDERUNT AMENDING C.A.S., BOOK L,
CHAPTER XIII., SECTION 4, REGULATING PRO-
CEEDINGS UNDER THE WORKMEN'S COMPENSA-
TION ACT, 1906

EDINBURGH, *25th May 1920.*

The Lords of Council and Session, considering that difficulties have arisen in the administration of the provisions of section 4 of C.A.S., Book L, Chapter xiii., and that it is expedient that these be obviated, do hereby, by and under the powers conferred by the Workmen's Compensation Act, 1906, enact and declare that said section 4 shall be read and administered as if the following paragraph (c) had been inserted after paragraph (b) in subsection (3) of section 4, viz.: "or (c) in which the ship is registered."

And the Lords direct this Act of Sederunt to be entered in the Books of Sederunt, and to be printed and published in common form.

(Signed) J. A. CLYDE, *I.P.D.*

ACT OF SEDERUNT AUTHORISING A FURTHER TEM-
PORARY INCREASE IN FEES UNDER C.A.S., K, iv.,
AND C.A.S., M, ii.

EDINBURGH, *20th July 1920.*

The Lords of Council and Session, considering that, owing to the continuing rise in wages and prices, it is expedient that a further increase be authorised in the fees allowed to be charged for business in the Supreme and Sheriff Courts, do therefore, under and by virtue of the powers contained in the Court of Session Act, 1868, section 106, and the Sheriff Courts (Scotland) Act, 1907, section 40, enact and declare as follows:

1. The fees (as apart from outlays) prescribed to be charged for business in the Supreme and the Sheriff Courts by C.A.S., K, iv., and C.A.S., M, ii., respectively, shall be subject to an increase of thirty-three and a third ($33\frac{1}{3}$) per cent.
2. This provision shall apply to all accounts of expenses in respect of business done between 1st October 1920 and 31st October 1921 inclusive.¹

¹ See Act of Sederunt, 18th July, 1923, page 430.

3. It shall apply to accounts whether taxed as between party and party or as between agent and client.

And the Lords appoint this Act to be entered in the Books of Sederunt and to be printed and published in common form.

(Signed) J. A. CLYDE, *I.P.D.*

ACT OF SEDERUNT REGULATING PROCEEDINGS
UNDER THE INCREASE OF RENT AND MORT-
GAGE INTEREST (RESTRICTIONS) ACT, 1920
(10 & 11 GEO. V. CAP. 17)

EDINBURGH, *2nd December 1920.*

The Lords of Council and Session, under and by virtue of the powers contained in the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, hereby enact and declare as follows, viz. :

1. Applications to the Sheriff, under said Act shall be by initial writ under the Sheriff Courts (Scotland) Acts, 1907 and 1913.
2. Such applications shall be a summary cause in terms of said Sheriff Court Acts and the procedure shall be as provided in these Acts for summary causes.

And the Lords direct this Act to be entered in the Books of Sederunt, and to be printed and published in common form.

(Signed) J. A. CLYDE, *I.P.D.*

ACT OF SEDERUNT REGULATING THE PROCEDURE
UNDER THE SEX DISQUALIFICATION (REMOVAL)
ACT, 1919, WITH REFERENCE TO JURY TRIALS IN
THE COURT OF SESSION AND IN THE SHERIFF
COURT, AND TO FATAL ACCIDENT ENQUIRIES.

EDINBURGH, *5th February 1921.*

The Lords of Council and Session, under and by virtue of the powers conferred on them by the Sex Disqualification (Removal) Act, 1919 (9 & 10 Geo. V. cap. 71), and the Jurors (Enrolment of Women) (Scotland) Act, 1920 (10 & 11 Geo. V. cap. 53), and of all

other powers vested in them, do hereby enact, provide and declare as follows, viz. :

1. Any application by the parties or any of them under section 1 (b) of the Sex Disqualification (Removal) Act, 1919, shall be made by motion—

(a) In the case of an action tried by jury in the Court of Session or in the Sheriff Court, at the time when a date is appointed for the trial, or, if a new trial is ordered, at the time when a date is appointed for such new trial;

(b) In the case of a petition under the Fatal Accidents Enquiry (Scotland) Act, 1895, at the time when the Order directing a public enquiry and specifying the time at which the same shall be held is pronounced.

2. (a) In all cases in which a precept is issued, according to the existing law and practice, for the preparation of a List of Jurors, the precept shall state in the event of any Order having been made under section 1 (b) of the said Act, either on the motion of any of the parties or in the discretion of the judge, that the list is to be composed of men only or of women only, as the case may be.

(b) In all these cases the Clerk who, according to the existing law and practice, makes up the panel or List of Jurors shall make up such panel or list so that the same is composed of men only, or of women only, as the case may be.

3. Where no Order has been made under section 1 (b) of the said Act, the List of Jurors prepared in pursuance of such precept shall be composed, as nearly as possible, of equal numbers of men and women jurors; and the proportion of men and women respectively included in such list or panel as special jurors shall, as nearly as possible, be equal.

4. The names of all the persons appearing on such list or panel shall be placed in the appropriate box or glass, according as they are special or common jurors, but irrespective of whether they are men or women; and the ballot shall be carried through according to the method heretofore in use.

5. Any woman summoned to serve on a jury shall be entitled to apply to be exempted from service on account of pregnancy or other feminine condition or ailment, subject to the following conditions :

(a) Application for exemption shall be made by her to the Clerk of the Court in which the cause is to be tried by jury, or the enquiry held, as soon as may be after receipt of the citation, and unless on special cause shown not later than the third day before the date appointed for such trial or enquiry, and the same shall be supported by evidence (by medical certificate or otherwise) vouching to the satisfaction of the said Clerk that the applicant is, or will be, by reason of pregnancy or other feminine condition or ailment, unfit to attend and serve as a juror at the trial or enquiry;

- (b) Applications duly made as herein provided for shall be dealt with by the said Clerk, who shall have power to dispose of them after such consultation with a judge competent to try the cause or to hold the enquiry as he may think necessary; and intimation of the granting or refusing of such application shall be made to the applicant by the Clerk;
- (c) Every citation upon a woman to attend as a juror shall contain a notification as nearly as may be in the terms of the Schedule hereto;
- (d) Nothing herein shall prejudice the right of the judge presiding at any trial or enquiry at any time before the jury is empannelled to grant exemption in his discretion to a woman from serving as a juror in any case in respect of any of the reasons provided for in the Act; nor any power presently exercised by the Clerk of Court or by any judge presiding at such trial or enquiry to excuse at any time any person summoned to attend as a juror from attendance.

6. This Act of Sederunt shall not apply to any trial or enquiry the date of which has been appointed or fixed prior to 16th February 1921.

And the Lords appoint this Act to be entered in the Books of Sederunt and to be printed and published in common form.

(Signed) J. A. CLYDE, *I.P.D.*

SCHEDULE

(Notice to be endorsed on the citation served on a woman summoned to serve as a Juror)

NOTICE

The person on whom this citation is served may apply to be exempted from service under it on account of pregnancy, or other feminine condition or ailment unfitting her for the time being from serving on a jury;

Provided that notice of application for exemption is given to [*design the Clerk of Court*] as soon as possible after receipt of this citation, and in any event (unless on special cause shown) not later than the third day before the diet of trial or enquiry mentioned in this citation: And that such application is supported by evidence (by a medical certificate or otherwise) vouching to the satisfaction of the said clerk that the applicant is or will be by reason of pregnancy or some other feminine condition or ailment, unfit to attend and serve as a juror at the trial.

ACT OF SEDERUNT AMENDING C.A.S., BOOK D, CHAP.
III., SECTIONS 1 AND 2, ANENT APPEALS FROM
THE SHERIFF COURT.

EDINBURGH, *23rd November 1921.*

The Lords of Council and Session, under and in terms of the powers conferred by the Court of Session Act, 1868 (31 & 32 Vict. cap. 100), section 106, and the Sheriff Courts (Scotland) Act, 1907 (7 Edw. VII. cap. 51), section 40, amended by the Sheriff Courts (Scotland) Act, 1913 (2 & 3 Geo. V. cap. 28), considering that the procedure in Appeals from the Sheriff Court should be brought more into conformity with that in Reclaiming Notes in the Court of Session, enact and declare as follows, viz.:

C.A.S., Book D, chap. iii., sections 1 and 2 are hereby amended by the deletion of the words "and proof, if any," occurring in the third and fourth lines thereof respectively, and by the insertion of the word "and" before the word "interlocutors" immediately preceding said deleted words: Provided always that, unless printing has been dispensed with, the proof, if any, shall, where material to the consideration of the cause, be printed, lodged, and boxed to the Court in time for the hearing of the Appeal.

And the Lords appoint this Act to be entered in the Books of Sederunt and to be printed and published in common form.

(Signed) J. A. CLYDE, *I.P.D.*

ACT OF SEDERUNT REGULATING THE FEES PAYABLE
IN THE SHERIFF COURTS OF SCOTLAND, AND PRE-
SCRIBING THE FORM OF BOOKS OF ACCOUNT TO
BE KEPT BY SHERIFF CLERKS.

EDINBURGH, *22nd February 1922.*

The Lords of Council and Session, in pursuance of the power vested in them by section 2 of the Courts of Law Fees (Scotland) Act, 1895, and section 40 of the Sheriff Courts (Scotland) Act, 1907, as amended by the Sheriff Courts (Scotland) Act, 1913, do, with concurrence of the Treasury, enact that on and after the first day of April 1922, Book M, Ch. 1, of the Codifying Act of Sederunt, the Act of Sederunt of 16th July 1919, and so much of the Act of Sederunt of 9th July 1921 as relates to fees payable in the Sheriff Courts of Scotland, shall be and are by this Act repealed; and in lieu thereof it is hereby enacted:—

1. On and after the first day of April 1922, Sheriff Clerks shall be entitled to charge the fees specified in the tables hereto annexed

in place of the fees hitherto chargeable by them, and no other or higher fees shall be charged by them, nor shall any addition be made thereto in respect of postage or otherwise.

2. Sheriff Clerks shall be responsible for the collection of all fees specified in the tables, and it shall be their duty to refuse to receive any paper chargeable with a fee, or to transmit any service or petition for completion of title for extract, or to allow any marking of an appeal, or other marking to be made in respect of which a fee is payable, unless the appropriate fee has been paid; and it shall further be their duty, when a fee is declared payable prior to any particular step being taken in a process, and such fee has not been paid by either party, to call the attention of the Sheriff to the matter, and the Sheriff, unless the fee is thereupon paid, shall proceed with the case as if the party by whom the unpaid fee is payable were absent or in default.

3. The fee in section 1 of Part I. shall cover extract. The *ad valorem* fees in section 3 of Part I. shall cover all proceedings, including correspondence, but not including petitions for appointment of executor, for restriction of caution, or for special warrants. The fee in section 6 of Part II. shall cover all proceedings, including extract, but not including appeal. The fees in sections 7 to 18 inclusive, and 29 to 34 inclusive, of Part II., shall cover all proceedings, including, in bankruptcy cases, the necessary extracts and abbreviates for the Accountant of Court and other Government Departments. The fees in sections 19 and 20 of Part II. shall cover all proceedings, including extract, but not including stated case. The fees in sections 21 to 28 inclusive of Part II. shall cover all proceedings (except appeal or stated case) in any action or proceeding for which special fees are not provided elsewhere. In criminal cases at the instance of a private prosecutor, when more persons than one are proceeded against in one complaint, the fee shall cover one extract conviction or order in respect of each person.

Any subsequent extracts or copies required shall be charged under section 4 of Part I., or section 1 of Part II. In litigated commissary, service of heirs, and bankruptcy cases, and in Workmen's Compensation cases subsequent to the Award, the same fees shall be charged as for similar business in the ordinary Sheriff Court.

When a small debt case is remitted to the ordinary roll, the parties shall pay fees as for an ordinary action, under deduction of any fees already paid.

4. No fees shall be payable in the first instance by any officer of the Crown in proceedings (other than small debt summonses) the expenses of which are payable by the Crown. When, however, such officer is found entitled to expenses, the Court fees shall be included and decerned for.

5. No fees shall be payable in cases under the Workmen's Compensation Act prior to an award or the recording of an agreement, except stated cases or applications for reference to a medical referee; on applications or other proceedings under section 5 of

the Dogs Act, 1906; on applications for relief under the Poor Laws; on petitions for leave to sue *in forma pauperis*; or on applications under the Acts for Registration of Births, Deaths, and Marriages, except those for warrants to register irregular Marriages.

6. Parties allowed to sue or defend *in forma pauperis* shall be exempted from payment of fees in the first instance; but when they are found entitled to expenses, the Court fees shall be included and decerned for. Any party or agent recovering any of the said expenses shall be bound to account therefor *pro rata* to the Sheriff Clerk.

At any time not exceeding six months after the close of the year of office of an agent for the poor, he shall prepare a list of the "Poor" cases in which he acted, showing the amount recovered by him, or by the parties represented by him, in each case. He shall then sign said list as a certificate of its correctness, and shall send the same to the Sheriff Clerk, along with a remittance for the Court fees recovered by him. From time to time thereafter he shall remit to the Sheriff Clerk the proper proportion of any further expenses recovered by him. Should any agent for the poor fail to comply timeously with this provision, the Sheriff Clerk shall call the attention of the Sheriff to the matter, and shall prepare a list of the "Poor" cases in which such agent acted, and shall send it to the agent for completion, as directed by this section.

7. The Books of Account to be kept by Sheriff Clerks shall be in the form of the schedules hereto annexed.

8. In this Act and relative tables the following words shall include the meanings under-mentioned :—

"Defender," "Compeerer," and "Party" shall, respectively, include a set of Defenders, Compeerers and Parties with the same interest, for whom one First Paper has been lodged.

"Writ" and "Paper," shall include Inventory of Personal Estate, Summons, Petition, Application, Appeal bringing an Action into the Sheriff Court, Precept of Arrestment on a Liquid Document of Debt, Note of Objections, Notice of Appearance, Answers, Defences, Statement in writing, or other written Pleading, in a cause or proceeding.

"Decree" in section 28 of Part II. shall include Licence, Appointment, Discharge, Certificate of Registration of a Club, or other written statement of the Sheriff's decision in any proceeding under sections 21 or 23 of Part II.

"Appeal" shall include the transfer of an action to the Court of Session at the instance of a party.

"Sheet" shall mean 250 words or part thereof.

"Sheriff" shall include Sheriff-Substitute.

"Sheriff Clerk" shall include Commissary Clerk of Edinburgh, Sheriff Clerk of Chancery, and Sheriff Clerk Depute.

And the Lords APPOINT this Act and the annexed Tables and

Schedules to be inserted in the Books of Sederunt, and to be printed and published in common form.

(Signed) J. A. CLYDE, *I.P.D.*

TABLE OF FEES FOR THE SHERIFF CLERKS OF SCOTLAND

A.—Fees to be Collected by Sheriff Clerks and Accounted for to the King's and Lord Treasurer's Remembrancer

PART I.—COMMISSARY PROCEEDINGS

1. Petition for appointment of executor,	£0 10 0
2. Petition for restriction of caution or for special warrant,	0 10 0
3. Receiving and examining Inventory of personal estate—	
<i>a.</i> When the amount of the estate belonging beneficially to the deceased of which confirmation is required	
(1) Does not exceed £1000—For each £50 or part thereof,	0 4 0
(2) Exceeds £1000 but does not exceed £5000—For the first £1000, and for each £500 or part of £500 thereafter,	4 0 0 0 15 0
(3) Exceeds £5000 but does not exceed £10,000—For the first £5000,	10 0 0
and for each £500 or part of £500 thereafter,	0 10 0
(4) Exceeds £10,000—For the first £10,000,	15 0 0
and for each £500 or part of £500 thereafter,	0 5 0
(with a maximum fee of £100).	
<i>b.</i> Additional and Corrective Inventories and Eiks shall be charged at the above rates on the additional estate belonging beneficially to the deceased, of which confirmation is required.	
<i>c.</i> Corrective Inventories which make no addition to the total amount of moveable estate disclosed in the original Inventory, and also Inventories of estate <i>ad non executa</i> shall be charged only	0 4 0
<i>d.</i> Where it is declared that confirmation is not required, fees at half the <i>ad valorem</i> rate shall be charged on receiving the inventory. If confirmation should subsequently be required, the remaining half of the fees shall then be charged.	

4. Extracting or copying, per sheet,	£0	2	0
5. Single search, to include inspection—			
Within five years from date of search,	0	1	0
Beyond five years from date of search,	0	3	0
6. <i>a.</i> Certifying English, Irish, or Colonial Probates or letters of administration—			
Gross estate sworn not to exceed £500,	0	2	0
Gross estate sworn not to exceed £3000,	0	10	0
Gross estate exceeding £3000,	1	0	0

PART II.—SHERIFF COURT PROCEEDINGS

General (applicable to all business under Part II.)

1. (<i>a</i>) Recording, extracting, or copying, per sheet,	0	2	0
(<i>b</i>) Preservation of Deeds, each,	0	2	0
2. Single search, to include inspection, per hour,	0	1	0
3. Inspection by a Trade Protection Society or Trade Publication, of Protests, Act Books and Court Rolls—			
Weekly for three months (payable in ad- vance),	0	10	0
Twice weekly for three months (payable in advance),	1	0	0
4. Appeal to Sheriff, Court of Session or Court of Justiciary,	0	10	0
5. Application for stated case,	1	10	0

*Small Debt, and Summary Removings under Section 38 of
the Sheriff Courts (Scotland) Act, 1907*

6. Summons, petition, or sist for rehearing,	0	4	0
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Bankruptcy Proceedings

7. Petition for sequestration of estates,	1	0	0
8. Act and warrant of trustee,	0	15	0
9. Writing examination of bankrupt or minute of meeting, per sheet,	0	2	0
10. Application (written or oral) for discharge of trustee,	0	10	0
11. Petition for discharge of bankrupt or application for approval of composition or deed of arrange- ment,	0	15	0
12. Request to act in aid of English Court of Bank- ruptcy,	0	5	0

Service of Heirs

13. Petition for general or special service or comple- tion of title, or note for a Crown or Prince's charter, writ or precept,	2	0	0
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14. Proceedings for choosing curators, giving up inventories of minor's effects, or following on a brieve from Chancery, £1 0 0

Proceedings under the Acts for Registration of Births, Deaths and Marriages

15. Petition for warrant to register an irregular marriage, 0 10 0

Summary Proceedings under the Poor Laws

16. Any application or first paper, except an application for relief, 0 5 0

Proceedings under the Lunacy Acts

17. Any petition or first paper, except as otherwise chargeable under Table B, 0 5 0

Inferior Courts Judgment Extension Act

18. Any proceeding, 0 5 0

Summary Jurisdiction Acts

19. Complaint, 0 10 0

Workmen's Compensation Act

20. Application for reference to a medical referee, 0 5 0
 21. Application for revision of an Award or recorded Memorandum of Agreement, 0 10 0
 22. Investment—at rate of 2 per cent. on the sum invested (calculated to the nearest shilling).

Ordinary and Miscellaneous

23. Initial writ in any proceeding for which no special fee is provided elsewhere, 0 10 0
 24. First paper, reponing, or attendance to state a defence, each defender or compeerer, 0 10 0
 25. Closing of the record, each party, 0 10 0
 26. Proof, each party, for each day or part of a day, 0 5 0
 27. Application for jury trial, 1 0 0
 28. Extract of decree, 0 5 0
 29. Caveat, to be in operation for one month, 0 2 0
 30. Sealing up repositories or the like, per hour, 0 5 0
 31. Summary warrant for recovery of rates, 1 0 0
 32. Subscription of roll of law agents (each county), 0 5 0
 33. Recording protest of a bill or promissory note, 0 5 0
 34. Lodging each set of plans or other Parliamentary deposit, 1 0 0
 35. Application for registration of a club, 1 0 0

B.—Fees to be Collected by Sheriff Clerks and Accounted for as mentioned below

INSPECTIONS OF PRINTED ABRIDGEMENTS, &C., SENT TO SHERIFF CLERKS, UNDER 31 AND 32 VICT. C. 64

(To be accounted for to the Law Clerk Register's Department.)

I.—For inspection of the Printed Abridgements and Indexes of the Registers of Sasines (General and Particular) in County arrangement, and of the Printed Minutes and Indexes of each County Division of the General Register of Sasines, there shall be charged the following Fees, viz.:—

1. For any period of not more than one year, a fee of 3s.
2. For any period extending from one year to ten years, inclusive, a fee of 6s.
3. For any period extending from eleven to forty years, inclusive, a fee of 15s.
4. For periods exceeding forty years, a further fee at the same rate as the preceding.

II.—For inspection of the Indexes of the Register of Abbreviates of Adjudications and the Registers of Inhibitions there shall be charged the following Fees, viz.:—

1. For any period of not more than one year, a fee of 3s.
2. For any period extending from one year to ten years, inclusive, a fee of 6s.
3. For any period extending from eleven to forty years, inclusive, a fee of 15s.
4. For periods exceeding forty years, a further fee at the same rate as the preceding.

PROCEEDINGS UNDER THE LUNACY ACTS

(To be accounted for to the General Board of Lunacy)

1. For order of admission granted by the Sheriff into a public or district asylum of a lunatic not being a pauper, £0 5 0
2. For similar order for a pauper lunatic, 0 2 6

CHANCERY EXTRACTS

Sheriff Clerks, other than the Sheriff Clerk of Chancery, shall, as heretofore, collect and account for to the Director of Chancery the fees of Extracts coming from his department.

(Schedules A and B contain forms of Books of Accounts to be kept by Sheriff Clerks.)

ACT OF SEDERUNT ALLOWING CERTAIN SUBSTITUTES TO BE ACCEPTED IN PLACE OF PRINTS, AND REGULATING THE TAXATION OF EXPENSES IN SUCH CASES.

EDINBURGH, *27th October 1922.*

The Lords of Council and Session considering that great expense is incurred by litigants in printing proofs and appendices of documents required to be lodged in process, and that it is expedient to give the parties to any cause an option to use either printing or other substitute methods of reproduction for such proofs and appendices, do therefore enact and declare as follows :—

I. A standard substitute is hereby approved by the Lords, and a copy of that shall be exhibited in each office of the Court (including also the Bill Chamber, Court of Teinds, etc.).

II. Copies which conform to that standard in size, spacing, lettering, legibility and otherwise (reproduced by any method whatsoever) shall be accepted by the Clerks of Court and Boxing Clerks in place of prints of proofs and of appendices in Reclaiming Notes and in Appeals from inferior Courts.

III. The decision of such Clerk shall be subject solely to an appeal forthwith written on the substitute and signed by or for the agent appealing to the Principal Clerk of Session, whose decision shall be final.

IV. Unless with the approval of the Court, which may be given at any stage of the proceedings either in the Outer or in the Inner House, the Auditor shall not allow more than the cost which would have been incurred by the production in process of a substitute where such is competent under this Act.

And the Lords appoint this Act to be inserted in the Books of Sederunt, and to be published in common form.

(Signed) J. A. CLYDE, *I.P.D.*

ACT OF SEDERUNT EXTENDING CERTAIN TEMPORARY ACTS OF SEDERUNT INCREASING FEES.

EDINBURGH, *18th July, 1923.*

The Lords of Council and Session, considering that the causes which called for the increases of fees granted temporarily in the Acts of Sederunt set forth in the Schedule hereto annexed still hold good, and it is therefore expedient that the increased fees therein allowed be still continued, therefore enact and declare that the said Acts of Sederunt shall be extended, and have full force and effect down to and including 31st October, 1924.

And the Lords appoint this Act to be entered in the Books of Sederunt, and to be printed and published in common form.

(Signed) J. A. CLYDE, *I.P.D.*

SCHEDULE REFERRED TO

1. Act of Sederunt amending C.A.S., Book M, Chapter iii., anent Fees in Civil Business for Sheriff Officers in Scotland, dated 22nd October 1919.
2. Act of Sederunt amending C.A.S., Book M, Chapter v., section 2, and Schedule B, anent Fees payable to Clerks of the Peace under the Licensing (Scotland) Act, 1903, or otherwise, dated 19th November 1919.
3. Act of Sederunt amending C.A.S., Book M, Chapter v., section 1, and Schedule A, anent Fees payable to Town-Clerks under the Licensing (Scotland) Act, 1903, or otherwise, dated 26th February 1920.
4. Act of Sederunt amending C.A.S., Book A, Chapter ix., section 4, anent Fees payable to Messengers-at-Arms, dated 1st June 1920.
5. Act of Sederunt authorising a further temporary increase in Fees under C.A.S., Book K, Chapter iv., and C.A.S., Book M, Chapter ii., dated 20th July 1920.
6. Act of Sederunt further amending C.A.S., Book M, Chapter v., section 2, and Schedule B, anent Fees payable to Clerks of the Peace under the Licensing (Scotland) Act, 1903, or otherwise, dated 8th July 1921.
7. Further amending C.A.S. Book M, Chapter v., section 1, and Schedule A, anent Fees payable to Town Clerks under the Licensing (Scotland) Act, 1903, dated 21st June, 1922.

(Signed) J. A. CLYDE, *I.P.D.*

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APPENDIX II.

FORMS OF VARIOUS WRITS IN CIVIL PROCEDURE

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NOTE ON THE FOLLOWING FORMS

IN the following Forms all that has been attempted is to give specimens of the Writ proper in proceedings of the most ordinary occurrence, with forms of the appropriate pleas in law. Forms of condescendence, though often desired by the busy practitioner, are of doubtful advantage. The facts of each case vary, and the adoption of formal styles for statements of fact often leads to inaccuracy in pleading. What is, in the opinion of the writer, more useful is an indication of the line of averment usually necessary in each kind of case, and this he has endeavoured to give. Exceptional treatment has been admitted in one or two instances, *e.g.* petitions for sequestration, and also in the forms of commissary petitions. The initial writ in these is practically stereotyped.

The title "Writ" has throughout been generally retained, coupled with the distinctive description of the action, *e.g.* Writ for Payment, Writ of Delivery, Writ of Sequestration. In a previous edition of this work the writer expressed the view that, so far as the Act could be said to give any direction on the subject, "Writ" seemed to be in accordance with its intention, and to be appropriate to the new form, as well as convenient, and conducive to a much desired uniformity of nomenclature. But, where statute does not enjoin, unanimity is unattainable. In Glasgow the use of the term "Petition" has been enjoined by the Sheriff; in Edinburgh, on the other hand, the generic description of "Initial Writ" seems to be favoured.

The following general observations may be made in regard to all Writs, *viz.* :—

In all cases the parties' full names, occupations, and addresses should be given. When a party sues or is sued in a special character, *e.g.* as trustee, curator, etc., this should be set forth in the instance. The form given in the Act (Form A) bears "where necessary, set forth relationship to defender, *e.g.* wife, creditor, etc." The meaning of this direction is not clear, but it is thought that it does not justify the inclusion in the instance of a statement of the relationship out of which the cause of action may arise. That a pursuer is landlord, or proprietor of subjects, or a relative, or partner, or stands in such like relationship to the defender, is a fact to be stated in the condescendence not in the instance.

When the ground of jurisdiction against the defender does not appear from the designation of the defender or from the terms of the crave, the ground on which jurisdiction arises should be shortly set forth in the condescendence, thus: "The defender is subject to the jurisdiction of this Court in respect that he is tenant of said property"; or "in respect that the place of implement of the contract is within the sheriffdom"; or "by virtue of arrestment *jurisdictionis fundandæ causa* used at pursuer's instance against him," or as the case may be.

In all cases the writ should be signed by the pursuer or by his agent. When an agent signs, he adds his designation and busi-

ness address, and the words "pursuer's agent." The form of writ, Form A as amended by the Act of 1913, does not bear that the signature of the party is to be also added at the end of the writ, but there can be no doubt that the condescendence and pleas in law should be authenticated by signature. The words "according to justice" and "in respect whereof" are not to be found in the statutory forms, and may be dispensed with.

In all actions with pecuniary conclusions other than a conclusion for expenses, when it is intended that arrestment is to be used in security, a warrant to arrest on the dependence should be asked in the crave.

I. FORMS OF VARIOUS WRITS IN CIVIL PROCEEDINGS

I. WRITS FOR PAYMENT

1. Writ for Payment of Account for Goods Supplied

Sheriffdom of _____ at _____

A. B. [*design him*], Pursuer,
against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant a decree against the defender for payment to the pursuer of £ _____ sterling, with interest thereon at the rate of 5 per centum per annum from the date of citation to follow hereon till payment, with expenses; and to grant warrant to arrest on the dependence.

[*To be signed*] A. B., Pursuer,
or

X. Y. [*add designation and business address*], Pursuer's Agent.

CONDESCENDENCE

Parties; transaction; date; price; account produced; delivery of goods to defender; refusal to pay.

PLEA IN LAW

The pursuer having sold and delivered to the defender the said goods as condescended on, is entitled to decree for the price thereof as craved.

[*To be signed*] A. B., Pursuer,
or

X. Y., Pursuer's Agent.

[*Note*.—All the succeeding forms will be signed as the foregoing.]

2. Writ for Payment of Sum in Bill or Promissory Note

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant a decree against the defender for payment to the pursuer of £ sterling, with interest thereon at the rate of 5 per centum per annum from the [*specify date*] till payment with expenses, and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; bill; date; amount; currency; non-payment; expenses of noting; interest on bill; refusal of defender to pay.

PLEA IN LAW

The defender having granted to the pursuer the bill condescended on, and having failed to retire the same when due, the pursuer is entitled to decree for the sum contained therein, interest thereon, and relative expenses as craved.

3. Writ for Payment of Sum Due under Cautionary Obligation

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant a decree against the defender for payment to the pursuer of £ sterling, with interest [*etc., as in preceding Form*].

CONDESCENDENCE

Parties; debt due by principal debtor; guarantee granted by defender; terms; sum due by principal debtor; application to principal debtor for payment; failure to pay; refusal of defender to pay.

PLEA IN LAW

The defender having granted said guarantee to the pursuer and the sum sued for being due thereunder, the pursuer is entitled to decree as craved.

CONDESCENDENCE

Parties; employment of pursuer by defender; work done; price; account produced; refusal to pay; locality of vessel, and necessity for arrestment.

PLEAS IN LAW

1. The pursuer having performed the repairs on the said vessel as condescended on, is entitled to have the vessel arrested and dismantled until security is found for payment of the account sued for.

2. The pursuer having performed the said repairs, is entitled to decree for the sum sued for.

6. Writ for Payment of Share of Proceeds of Diligence

Sheriffdom of _____ at _____

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant a decree, ordaining the defender to produce a full account of the proceeds of the sale carried through by him, on or about _____, of certain effects which belonged to X. Y., poinded by the defender on or about _____, and to pay the pursuer the sum of £ _____ sterling, or such other sum as shall be found to be his proportion of the free proceeds of said sale, after deduction of expenses, with interest thereon at the rate of 5 per centum per annum from the date of the decree to follow hereon till payment; and failing his producing such account, to grant a decree against the defender for payment to the pursuer of £ _____ sterling, which shall in that event be held to be the proportion due to the pursuer as aforesaid; with interest as aforesaid, and with expenses, and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; decree obtained by pursuer against X. Y.; date; diligence by pursuer; decree obtained by defender against said X. Y.; date; poinding by defender of the goods of X. Y.; date; sale of poinded goods by defender; date; notour bankruptcy of X. Y. [or other facts constituting grounds of pursuer's right to claim proportion]; refusal of defender to account.

PLEAS IN LAW

1. The pursuer being a creditor of the said X. Y., and entitled in virtue of his debt and diligence to a *pari passu* ranking, the

defender is bound to communicate to the pursuer his proportion of the free proceeds of the sale carried through by the defender.

2. In the event of the defender failing to produce an account the pursuer is entitled to decree, in terms of the alternative crave.

7. Writ of Constitution and for Payment against Executor

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Executor of the late E. F. [*design him*],
Defender.

The pursuer craves the Court to grant a decree against the defender as executor foresaid for payment to the pursuer of £ sterling, with interest thereon at the rate of 5 per centum per annum from the date of the decree to follow hereon till payment; with expenses in the event of the defender offering opposition hereto; and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; account due to pursuer by deceased; how incurred; death of debtor; appointment of defender as executor; refusal of defender to admit claim against estate of deceased.

PLEA IN LAW

The pursuer being a creditor of the deceased, is entitled to decree as craved.

8. Writ for Payment against Vitious Intromitter

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant a decree against the defender for payment to the pursuer of £ sterling, with interest thereon at the rate of 5 per centum per annum from the date of the decree to follow hereon till payment; with expenses; and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; debt due to pursuer by the deceased; specific facts of defender's intromissions with the estate; intromissions vitious and without any legal title; refusal of defender to pay.

PLEAS IN LAW

1. The defender as vitious intromitter with the estate of the said deceased being liable to the pursuer for the sum sued for, decree should be granted as craved.

2. In any event, the defender is liable therefor to the extent of his intromissions.

II. WRITS FOR DAMAGES

1. Writ for Damages for Personal Injury

Sheriffdom of _____ at _____

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant a decree against the defender for payment to the pursuer of £ _____ sterling, with interest thereon at the rate of 5 per centum per annum from the date of the decree to follow hereon till payment; with expenses; and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; circumstances under which accident occurred; nature of accident; cause of accident [*state specific defect in machinery or otherwise, as the case may be*]; specific statements of fault on the part of the defender; pursuer unaware of danger; defender knew or ought to have known of it; specification of injuries sustained and loss suffered (*e.g.* medical expenses, loss of income, etc.); refusal to pay compensation.

PLEAS IN LAW

1. The pursuer having suffered loss, injury, and damage through the fault of the defender as condescended on, is entitled to reparation therefor.

2. The sum sued for being reasonable, decree therefor should be granted as craved.

2. Writ for Damages by Employee against Employer at Common Law, or alternatively under Employers' Liability Act, 1880

Sheriffdom of _____ at _____
 A. B. [*design him*], Pursuer,
 against
 C. D. [*design him*], Defender.

The pursuer craves the Court to grant a decree against the defender for payment to the pursuer of the sum of £ _____ sterling, or alternatively of the sum of £ _____ sterling, or such other sum as may be found to be due to the pursuer under and in virtue of the Employers' Liability Act, 1880, with interest [*etc., as in preceding form.*]

CONDESCENDENCE

Parties; employment of pursuer by defender; pursuer's duties; description of work at which accident occurred; A. B., superintendent [*or foreman*], not ordinarily engaged in manual labour; facts of accident; cause of accident; facts constituting fault at common law; facts constituting fault under the statute, *e.g.* negligence of superintendent [*or obedience to orders; obligation to obey*]; pursuer unaware of danger; defender knew or ought to have known of it; injuries sustained; compensation at common law or under the said Act refused; average wages of workman in same grade of employment during past three years; notice given under the statute.

PLEAS IN LAW

1. The pursuer having suffered loss, injury, and damage through the fault of the defender as condescended on, is entitled to reparation therefor.

2. The sum first sued for being reasonable, decree therefor should be granted as craved.

3. *Separatim*, the pursuer having been injured through the negligence of a servant in the defender's employment while in the exercise of a superintendence entrusted to him [*or through conforming to an order given by a person in the service of the defender whom he was bound to obey, or as the case may be*], is entitled to reparation under the Employers' Liability Act, 1880, as craved.

3. Writ for Damages for Slander

Sheriffdom of _____ at _____
 A. B. [*design him*], Pursuer,
 against
 C. D. [*design him*], Defender.

The pursuer craves the Court to grant a decree against the defender for payment to the pursuer of £ sterling, with interest [*etc., as before*].

CONDESCENDENCE

Parties; time, place, and parties before whom slander uttered; the slander complained of (if written, quote it; if verbal, give words as nearly as possible); if words not in themselves defamatory, state innuendo; statement false and calumnious; injury sustained by pursuer (*e.g.* injury to feelings, reputation, business, etc.); refusal of defender to apologise or withdraw, or to pay compensation.

PLEAS IN LAW

1. The defender having defamed the character of the pursuer as condescended on, the pursuer is entitled to reparation.

2. The sum sued for being reasonable, decree therefor should be granted as craved.

4. Writ for Damages for Breach of Promise

Sheriffdom of

at

A. B. [*design her*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant a decree against the defender for payment to the pursuer of £ sterling, with interest [*etc., as before*].

CONDESCENDENCE

Parties; social position; acquaintance; intimacy; courtship; correspondence; presents; affection; proposal by defender to marry and acceptance by pursuer; defender's breach of promise; injury to pursuer (including injury to feelings, loss of matrimonial prospects, expenses incurred for prospective marriage, etc.); financial position of defender; refusal to pay compensation.

PLEAS IN LAW

1. The defender having contracted to marry the pursuer, and having broken said contract, to the loss, injury, and damage of the pursuer, is liable to her in reparation.

2. The sum sued for being reasonable, decree therefor should be granted as craved.

CONDESCENDENCE

Parties; relationship; age and indigence of pursuer; means of defenders; refusal to contribute to maintenance.

PLEAS IN LAW

1. The pursuer being in indigent circumstances, the defenders being able to do so are bound to contribute towards her maintenance.

2. The sums sued for being reasonable and the defenders being able to pay same, decree therefor should be granted as craved.

3. Writ of Filiation and Aliment

Sheriffdom of _____ at _____ .

A. B. [*design her*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant a decree against the defender for payment to the pursuer of (1) the sum of £ _____ sterling of inlying expenses connected with the birth of an illegitimate male child of which the pursuer was delivered on _____, and (2) the sum of £ _____ sterling per annum in name of aliment for said child, and that for _____ years, payable by equal instalments, quarterly and in advance, as from the _____ day of _____, with interest on said sum of £ _____ sterling at the rate of 5 per centum per annum from the date of citation hereon until payment, and on each instalment of aliment, at said rate, from the date of its becoming due until payment, with expenses; and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; history of acquaintanceship and intimacy; meetings and opportunities; specific acts of connection, with places and dates; resultant pregnancy and birth; child still alive; specific averment that defender is the father; conduct of the parties after the birth; refusal of defender to acknowledge paternity and pay aliment.

PLEAS IN LAW

1. The defender being the father of the pursuer's said child, is bound to contribute towards the inlying expenses and aliment thereof.

2. The sums sued for being reasonable, decree therefor should be granted as craved.

4. Writ for Interim Aliment by Wife who has been deserted by Husband

Sheriffdom of

at

A. B. or D. [*design her*], wife of C. D. [*design him*], Pursuer,

against

The said C. D., Defender.

The pursuer craves the Court to grant a decree against the defender for payment to the pursuer of £ sterling, per week, weekly and in advance, as from until the defender receives her to live with him, or until the rights of parties are determined, with interest on each weekly sum at the rate of 5 per centum per annum from the date on which the same becomes due till payment, with expenses.

CONDESCENDENCE

Parties; marriage; date; extract certificate produced; desertion by defender; poverty of pursuer; financial position of defender; intention to raise action of adherence and aliment; facts justifying interim application.

PLEAS IN LAW

1. The defender having deserted the pursuer as condescended on, and the pursuer being about to raise an action of adherence and aliment, the pursuer is entitled to aliment.

2. The sum sued for being reasonable, decree therefor should be granted as craved.

3. In the circumstances condescended on, the pursuer is entitled to make this interim application, and to the expenses hereof.

5. Writ of Adherence and Aliment

Sheriffdom of

at

A. B. or D. [*design her*], wife of C. D. [*design him*], Pursuer,

against

The said C. D., Defender.

The pursuer craves the Court to find and declare that the pursuer being the lawful wife of the defender, the defender is bound to adhere to the pursuer and to cohabit with her, and to treat and entertain her at bed and board as his wife; and to ordain the defender to adhere to the pursuer, and to

CONDESCENDENCE

PLEAS IN LAW

- ## 6. Writ of Separation and Aliment

against

The pursuer craves the Court (First) to find that the defender has been guilty of cruelty towards the pursuer (*or*, that the defender has been guilty of adultery), and that the pursuer has full liberty and freedom to live separate from the defender; and to ordain the defender to separate himself from the pursuer *a mensa et thoro* in all time coming; (Second) to find the pursuer entitled to the custody of and , the pupil children of the marriage between the pursuer and the defender; (Third) to grant a decree against the defender for payment to the pursuer of alimony for herself at the rate of sterling weekly, and for each of the said children at the rate of sterling

weekly, payable said sums of aliment weekly, and in advance, beginning as at the date of the decree to follow hereon and continuing so far as regards the aliment for the pursuer herself during the joint lives of the pursuer and defender, and so far as regards the aliment for said children so long as they or either of them shall remain in the custody of the pursuer and be unable to earn their own livelihood, with interest at the rate of 5 per centum per annum on each weekly payment of aliment from the time it becomes due until paid; and (Fourth) to find the defender liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; marriage; date; extract certificate produced; children and dates of birth; general averments of husband's conduct since marriage; particulars of cruelty or adultery as the case may be; if cruelty, specify acts of cruelty, injury to health of pursuer, danger to life, etc.; if adultery, specify person with whom committed, time and place; financial position of defender.

PLEAS IN LAW

1. The defender having been guilty of cruelty towards the pursuer (or adultery) as condescended on, the pursuer is entitled to decree of separation and custody of children as craved.

2. The sums sued for as aliment being reasonable, decree therefor should be granted as craved.

7. Application for Restriction of Aliment

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. or B. [*design her*], wife of the said A. B., Defender.

The pursuer craves the Court to restrict the aliment to be paid by the pursuer to the defender, under a decree obtained by the defender against the pursuer in this Court on _____, to the sum of £ _____ sterling per week from and after _____, and to find defender liable in expenses in the event of her opposing this application.

CONDESCENDENCE

Parties; narrate decree; pursuer's financial position when decree granted; pursuer's present financial position; changes in circumstances of defender; inability of pursuer to pay at former rate.

PLEA IN LAW

The pursuer being unable, owing to change in circumstances, to continue payment of the aliment decerned for (*or* the defender not being now in need of aliment to the extent decerned for), is entitled to have the same restricted.

NOTE.—This application is frequently made by Minute lodged in the original process.

IV. COUNT AND RECKONING

1. Writ of Count, Reckoning, and Payment against a Co-partner

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court (first) to ordain the defender to produce before the Court the whole books and accounts and other documents of the dissolved firm of A. B. & Co., of which firm the pursuer and the defender were the sole partners, together with a full account of his intromissions as partner, or otherwise, with the funds and property of the said firm for the whole period of the said partnership down to the day of , when the same was dissolved, that the true balance due by him thereon may be ascertained; and (second) to grant a decree against the defender for payment to the pursuer of £ sterling, or such other sum as may be found to be due by him as the true balance on said account, with interest at the rate of 5 per centum per annum from the date of citation hereon till payment; and in the event of the defender not entering appearance in the present action, or of his failing to produce an account of his intromissions, to grant a decree against him for payment to the pursuer of £ sterling, which shall in that event be held to be the balance due to the pursuer, with interest thereon as aforesaid, with expenses; and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; partnership; business carried on; dissolution; date; intromissions of the defender with partnership assets; probable sum due; refusal of defender to account.

PLEAS IN LAW

1. The defender having intromitted with the partnership funds as condescended on, is bound to count and reckon with the pursuer for his intromissions therewith.

2. In the event of the defender failing to produce an account of his intromissions, decree should be granted in terms of the alternative crave.

2. Writ of Count, Reckoning, and Payment against a Trustee

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], as Trustee acting under the Settlement of the late E. F. [*design him*], dated _____ and registered in the Books of Council and Session, _____, and as an individual, Defender.

The pursuer craves the Court to ordain the defender (First) to produce a full account of his intromissions as trustee foresaid and as an individual with the means and estate of the said E. F.; and (Second) to pay to the pursuer the sum of £ _____ sterling, or such other sum as may appear to be the true balance due by him, with interest thereon at the rate of 5 per centum per annum from the date of the citation to follow hereon till payment; and in the event of the defender not entering appearance in the present action, or of his failing to produce such account, to grant a decree against the defender for payment to the pursuer of £ _____ sterling, which shall in that event be held to be the balance due to the pursuer, with interest as aforesaid; with expenses; and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; settlement of deceased; pursuer's interest in estate; intromissions of defender; failure to account; sum due to pursuer.

PLEAS IN LAW

1. The defender as Trustee foresaid, is bound to count and reckon with the pursuer for his intromissions with the trust estate.

2. In the event of the defender failing to produce an account of his intromissions, decree should be granted against him in terms of the alternative crave.

V. MULTIPLEPOINDING

Writ of Multiplepoinding and Exoneration

Sheriffdom of _____ at _____

A. B. [*design him*], Pursuer and Real Raiser,

against

C. D., E. F., G. H., and I. J. [*design them*], Defenders.

The pursuer craves the Court to find that he is the holder of £ _____ sterling [*in many cases the fund ought to be described*], and that he is only liable in once and single payment thereof, and is entitled on payment or consignation to be exonerated thereof, and to obtain payment of his expenses; and to grant decree in favour of the party or parties who shall be found to have best right to the fund *in medio*; and to find anyone offering opposition hereto liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; statement of funds held by pursuer; conflicting claims; inability of pursuer to ascertain to whom funds belong; necessity of action.

PLEA IN LAW

The pursuer being liable only in once and single payment of the fund *in medio*, is entitled, on payment or consignation thereof, to obtain decree of exoneration.

[NOTE.—In the case of the holder of the fund being the nominal raiser, the action being raised by a claimant, the foregoing prayer, condescendence, and plea may be adopted, except that a nominal raiser is not, as a matter of course, entitled to expenses. He usually incurs none, and in some Sheriff Courts is not awarded any. The instance will run as follows:—

A. B. [*design him*], Pursuer and Nominal Raiser,

against

C. D. [*design him*], Real Raiser; and E. F. and G. H.
[*design them*], Defenders.]

VI. FURTHCOMING

Writ of Furthcoming

Sheriffdom of _____ at _____
 A. B. [*design him*], Pursuer,
 against

C. D. [*design him*], Arrestee, and E. F. [*design him*], Common
 Debtor, Defenders.

The pursuer craves the Court to grant a decree against the defender, C. D., for payment to the pursuer of £ _____ sterling, or such other less sum as may be owing by him to the said E. F., and arrested in his hands at the instance of the pursuer upon _____ by virtue of decree (*or* warrant of arrestment) in favour of the pursuer, granted by the Sheriff of _____ on _____, against the said E. F., the common debtor, for the sum of £ _____ sterling, together with the taxed expenses of bringing this action; and in the event of the arrested fund being insufficient to meet said debt and expenses, to find the said E. F. liable in said expenses; and in any event to find the said C. D. and E. F. liable in expenses, in the event of their appearing and opposing this action; and to decern therefor; and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; decree obtained by pursuer against E. F.; amount; date; arrestment by pursuer in hands of C. D. of sums due to E. F.; date; sum arrested; sum still due to pursuer under decree.

PLEA IN LAW

The pursuer having used arrestments in the hands of the said C. D. of the sums due to him by the said E. F., he is entitled to have the same made furthcoming in satisfaction of his debt.

VII. WRITS OF IMPLEMENT

1. Writ of Implement of Contract of Sale

Sheriffdom of _____ at _____
 A. B. [*design him*], Pursuer,
 against
 C. D. [*design him*], Defender.

The pursuer craves the Court to ordain the defender to implement his part of the contract of sale constituted by missives,

dated _____, entered into between the pursuer and the defender, whereby the pursuer offered to sell and the defender agreed to purchase the heritable subjects [*describe them shortly*] at the price of £ _____ sterling; and that by making payment to the pursuer of the sum of £ _____ sterling, with interest thereon at the rate of 5 per centum per annum from _____ till payment, in exchange for a valid disposition of said subjects in his favour; or otherwise to find and declare that the defender has failed to implement his part of the said contract, and that the pursuer is thereby released from any obligation to implement and fulfil his part of said contract; and in that event to grant a decree against the defender for payment to the pursuer of £ _____ sterling, with interest thereon at the rate of 5 per centum per annum from the date of the decree to follow hereon till payment; and to find the defender liable in expenses; and to decern therefor; and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; sale; description of subjects; price; when payable; pursuer willing to grant disposition; refusal of defender to pay the price and to take delivery of disposition; loss sustained by pursuer; penalty or damages.

PLEAS IN LAW

1. The defender having failed to implement the contract of sale as condescended on, the pursuer is entitled to decree of implement as craved.

2. *Separatim*, the defender having failed to implement the said contract, decree should be granted in terms of the alternative crave.

2. Writ of Implement of Obligation to Grant Deed

Sheriffdom of _____

at _____

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to ordain the defender to implement the agreement entered into between him and the defender, dated _____, by which the defender bound himself to grant to the pursuer an assignation of the remaining period of the lease held by him until _____, of the shop, No. _____ Street, _____, and that by executing said assignation, and giving the pursuer immediate possession of

the said shop; and failing the said assignation being executed by him within such period as the Court shall appoint, to find and declare that the defender has broken the said agreement, and that the pursuer is no longer bound thereby, and is released from his obligations thereunder; and to find the defender liable in expenses; and to decern therefor.

CONDESCENDENCE

Parties; lease of subject; agreement to assign; terms; refusal to implement.

PLEAS IN LAW

1. The defender having refused to assign the said lease as condescended on, the pursuer is entitled to decree of implement as craved.

2. In the event of the defender failing to execute the said assignation, decree should be granted in terms of the alternative crave.

VIII. WRITS OF DELIVERY

1. Writ of Delivery of Horse

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court—(First) to ordain the defender to deliver to the pursuer a chestnut horse named _____, put by him into defender's stables on _____; and (Second) failing such delivery to grant a decree against the defender for payment to the pursuer of £ _____ sterling; and (Third) to grant a decree against the defender for payment to the pursuer of £ _____ sterling, with interest on said respective sums at the rate of 5 per centum per annum from the date of the decree to follow hereon till payment, with expenses; and to grant warrant to arrest in security.

CONDESCENDENCE

Parties; horse put in defender's stable; date; period for which stabled; hire offered; reasonable amount; refusal of defender to deliver; value of horse; loss sustained through non-delivery.

PLEAS IN LAW

1. The defender being in illegal possession of the pursuer's horse, the pursuer is entitled to delivery thereof as craved.

2. In the event of the defender failing to deliver the said horse, decree should be granted in terms of the second crave.

3. The pursuer having suffered loss to the extent set forth in the third crave through the defender's illegal detention of his horse, is entitled to decree in terms thereof.

NOTE.—An alternative remedy is suggested in the following form.

2. Writ of Delivery of Piano under Hire-purchase Agreement

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,
against

C. D. [*design him*], Defender.

The pursuer craves the Court to ordain the defender to deliver to the pursuer an upright semi-grand piano numbered _____ and bearing the name "_____"; or otherwise, and alternatively to grant a decree against the defender for payment to the pursuer of the sum of £ _____ sterling, with interest thereon at the rate of 5 per centum per annum from the date of the decree to follow hereon till payment, and in any event to find the pursuer entitled to expenses; and to grant warrant to arrest in security.

CONDESCENDENCE

Parties; agreement; failure of defender to pay agreed on hire; right of pursuer to resume possession; value of piano.

PLEAS IN LAW

1. The defender having failed to pay the stipulated hire, the pursuer is entitled by virtue of the agreement condescended on to resume possession of the piano.

2. The defender having refused to give back the said piano, the pursuer is entitled to decree of delivery as craved.

3. Alternatively the pursuer is entitled to decree in terms of the alternative crave of the writ.

3. Writ of Delivery of Child

Sheriffdom of _____ at _____ .

A. B. or D. [*design her*], wife of C. D. [*design him*], Pursuer,
against

The said C. D., Defender.

The pursuer craves the Court to ordain the defender to deliver to her her child, named _____, aged six months, at present in the custody of the defender, and that within such short period as the Court shall appoint; and failing his doing so, to grant warrant to officers of Court to search for the said child and take possession of and deliver him to the pursuer; and to interdict the defender from interfering in any way with the pursuer in her possession and custody of said child, and to find the defender liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; marriage; date; birth of child; removal by defender; refusal to restore; specific facts justifying application.

PLEA IN LAW

The pursuer, being the mother of the said child, is entitled to decree as craved.

IX. WRITS OF INTERDICT

1. Writ of Interdict against the Sale of Poinded Effects

Sheriffdom of _____

at _____

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to interdict the defender and all others acting under his authority or on his behalf from selling, removing, or in any way interfering with the goods or effects belonging to the pursuer and in his house (state place) under and in virtue of an alleged extract decree containing a warrant to poind at the instance of the said defender against _____ and dated _____, and in particular to interdict the defender, and all others as aforesaid from selling, removing or otherwise interfering with the following articles, viz.: [*set them forth specifically*] all belonging to the pursuer; and to grant interim interdict; and to find the defender liable in expenses.

CONDESCENDENCE

Parties; poinding; pursuer's ownership of effects; intimation to defender and officer; if poinding only threatened, grounds for interdict.

PLEAS IN LAW

1. The defender having wrongfully and illegally poinded (or threatened to poind) effects belonging to the pursuer as condescended on, the pursuer is entitled to interdict as craved.

2. In the circumstances set forth interim interdict should be granted.

2. Writ of Interdict against Trespasser

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to interdict the defender from unlawfully entering or trespassing upon the lands of _____, in the parish of _____, belonging to the pursuer, or any part thereof, or in any other way interfering with the pursuer in the possession of the same; and to grant interim interdict; and to find the defender liable in expenses; and to decern therefor.

CONDESCENDENCE

Parties; ownership of lands by pursuer; trespass by defender; dates; places; warning given to defender; continued trespass; injury to pursuer; refusal of defender to desist.

PLEAS IN LAW

1. In respect that the defender is in the habit of trespassing on the lands of the pursuer as condescended on, the pursuer is entitled to interdict as craved.

2. In the circumstances set forth, interim interdict should be granted.

3. Writ of Breach of Interdict

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer, with concurrence of E. F.,
Procurator-Fiscal of Court, for the public interest,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to ordain the defender to appear personally before the Court on such a day and at such an

hour as the Court may appoint, to answer to the charge against him of being guilty of contempt of Court and breach of interdict granted by upon , whereby the defender was interdicted from [*narrate terms of the interdict*]; and, failing his appearance before the Court as aforesaid, to grant warrant to officers of Court to apprehend the defender and bring him before the Court to answer as aforesaid; and, on the charge being admitted or proved, to find that the said defender has been guilty of contempt of Court and breach of interdict, and in respect thereof to fine and amerce him in the sum of £ sterling, or such other sum as the Court shall determine; or otherwise, or failing payment of said fine, to grant warrant for imprisoning him for such period as to the Court shall seem meet, or to do as in the discretion of the Court shall seem just; and to find the defender liable in expenses, and decern therefor.

CONDESCENDENCE

Parties; interdict; date; terms of interdict; intimation to defender; acts done in breach of interdict—*seriatim*, with place, date, and exact description of act; necessity for proceedings.

PLEA IN LAW

The defender having wilfully disregarded and disobeyed the interdict granted as condescended on, should be found guilty and punished for contempt of Court.

[This writ will be endorsed as follows:—"I concur.
E. F., Procurator-Fiscal."]

X. WRITS OF DECLARATOR

1. Writ of Declarator of Donation mortis causa

Sheriffdom of at .

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to find and declare that E. F. [*design him*] endorsed and delivered to the pursuer on a deposit-receipt for the sum of £ sterling granted by the Bank of Scotland on in name of the said E. F. *animo donandi*, and thereby made a valid donation *mortis causâ* to the pursuer of the sum therein

contained; to find that the said deposit-receipt and sum therein contained, and the interest accrued thereon, belong to the pursuer, and to interdict the defender from interfering with or preventing the pursuer obtaining payment of the sum and interest aforesaid; and to find the defender liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; relationship of pursuer to deceased; specific facts of the donation; refusal of defender to admit pursuer's claim.

PLEA IN LAW

The said deposit-receipt having been delivered to the pursuer as a donation *mortis causâ*, the pursuer is entitled to decree as craved.

2. Writ of Declarator of Right of Property, Interdict and Damages

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court, (First) to find and declare that the pursuer is proprietor of All and Whole [*describe the subjects*], and that the pursuer or others authorised by him are legally entitled to prevent and exclude the defender from entering upon the said subjects or any part thereof; (Second) to interdict the defender from entering upon the said subjects or any part thereof; and (Third) to grant a decree against the defender for payment to the pursuer of £ sterling, with interest thereon at the rate of 5 per centum per annum from the date of the decree to follow hereon till payment; with expenses; and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; ownership and title of pursuer; defender's claim to possession; acts of trespass by defender; remonstrance of pursuer; continuance of trespass; necessity for action; specification of damage sustained.

PLEAS IN LAW

1. The pursuer being the owner of the subjects in question, is entitled to decree of declarator as craved.

2. In respect that the defender is in the habit of trespassing upon the said subjects, interdict should be granted as craved.

3. The pursuer having suffered damage through the trespass of the defender as condescended on, is entitled to reparation therefor.

4. The sum sued for in name of damages being reasonable, decree therefor should be granted as craved.

3. Writ of Declarator of Servitude

Sheriffdom of

at

.

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to find and declare that there exists in favour of the lands of , of which the pursuer is proprietor, a servitude of passage for horses and carts and other wheeled vehicles from the stables and yard belonging to him at , by the road or lane from the said stables and yard along the western boundary of the defender's property at to ; to interdict the defender, and all others deriving authority from him, or acting under his instructions, from interfering with the pursuer, his family, and servants in the peaceable enjoyment of the said right of passage; to grant interim interdict; and to find the defender liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; ownership and title of pursuer; lands of defender; road; servitude right over; exercise by pursuer and authors for forty years; manner in which exercised; no challenge; now challenged for first time; how challenged; necessity for action.

PLEAS IN LAW

1. There being a servitude over the lands of the defender in favour of the lands of the pursuer as condescended on, the pursuer is entitled to decree of declarator as craved.

2. The defender having interfered with the pursuer in his exercise of the said right of servitude, and having refused to cease such interference, interdict should be granted as craved.

3. In any event, the pursuer having exercised the said right of servitude for a period of over seven years, is entitled to interdict as craved.

4. In the circumstances set forth, interim interdict should be granted.

4. Writ of Declarator and for Payment of Casualty

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to find and declare that in consequence of the death of E. F. [*design him*], the last entered vassal in the lands of [*briefly describe the subjects*], a casualty of £ sterling became due to the pursuer, as superior of the said subjects, on ; that said casualty is still unpaid, and that the rents, maills, and duties of the said lands after the date of citation hereto belong to the pursuer until said casualty and the expenses of this process have been paid to the pursuer; and to grant a decree against the defender for payment to the pursuer of £ sterling with interest thereon at the rate of 5 per centum per annum from [*specify date*] till payment; with expenses; and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; pursuer's title of superiority; defender's title of property; vassal last entered; death; casualty payable; amount; refusal to pay.

PLEAS IN LAW

1. A casualty being due in respect of the said subjects by virtue of the terms of the title referred to, the pursuer is entitled to decree of declarator as craved.

2. The defender being due the said casualty, decree therefor should be granted as craved.

5. Writ of Declarator of Forfeiture of Right of Redemption of Bond

Heritable Securities (Scotland) Act, 1894

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to find and declare that the defender has forfeited the right of redemption reserved to

him in the bond and disposition in security for £ sterling, granted by the defender in favour of the pursuer, dated , and recorded in the Division of the General Register of Sasines applicable to the County of ; that the said right of redemption is extinguished as from the date of the decree to follow hereon; that the pursuer has right to and is vested in All and Whole [*describe the subjects and refer to burdens, etc., as in the bond*], being the subjects described in and conveyed in security by the said bond and disposition in security, as absolute proprietor thereof, and that at the price of £ sterling; and to grant warrant to record an extract of the decree to follow hereon in the said Division of the General Register of Sasines; and to find any one appearing and offering opposition hereto liable in expenses.

CONDESCENDENCE

Parties; bond and disposition in security by defender; subjects conveyed in security; service of notarial intimation; non-compliance with demand; advertisements and exposure; amount due and upset price; price not exceeding sum due under bond; failure to sell; right to forfeiture.

PLEA IN LAW

In virtue of the proceedings founded upon, the pursuer is entitled to decree of declarator as craved.

6. Writ of Declarator of Validity of Execution of Deed

Conveyancing (Scotland) Act, 1874, sec. 39

Sheriffdom of at .

A. B. [*design him*], Pursuer,

against

C. D., E. F., and G. H. [*design them*], Defenders.

The pursuer craves the Court to find and declare that the trust disposition and settlement herewith produced and bearing to be executed on 1913, by J. K. [*design him*], was subscribed on said date by the said J. K. as grantor or maker thereof, and by X. Y. and Y. Z. as witnesses to the subscription of the said J. K.; and to find the expenses of this application a proper charge on the estate of the said J. K.

CONDESCENDENCE

Parties; preparation of trust disposition and settlement; read

over and approved by J. K.; signed by J. K. in presence of X. Y. and Y. Z.; defects in attestation; necessity for application.

PLEA IN LAW

The said trust disposition and settlement having been validly executed, the pursuer is entitled to decree of declarator as craved.

XI. DIVISION AND SALE

Writ of Division or Division and Sale of Common Property

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to find and declare that the pursuer is entitled to insist in an action of division or division and sale of All and Whole [*describe the subjects*], to grant warrant to such auctioneers as the Court shall think proper to dispose of said lands (or subjects), heritably and irredeemably, by public roup, in such manner and under such conditions as the Court shall direct; to ordain the pursuer and defender, or in the event of the defender not appearing, to grant warrant to the pursuer to execute, subscribe, and deliver to the purchaser or purchasers of said lands (or subjects) such dispositions or other titles as shall be necessary for constituting full right thereto in their persons; and to find and declare that the price of said lands (or subjects) when sold, after deduction of the expenses of this action and all other expenses attending the sale so to take place, should be divided equally between the pursuer and defender; (should a sale of the subjects be regarded as inappropriate, and division preferred, the following crave may be adopted), [or otherwise, and in the event of such sale being deemed by the Court inexpedient, then to determine the value and extent of said lands (or subjects); to appoint a surveyor or surveyors to measure and survey the same, to draw a plan thereof, and to report as to their division; to divide the said lands (or subjects) and others in equal portions between the pursuer and defender, due consideration being always had of the different qualities of the ground of said lands and the nature of the buildings thereon; to mark off the division so made, so as to ascertain the limits

and boundaries thereof in all time coming; to declare the said portions or divisions to pertain and belong to the pursuer and defender respectively, heritably and irredeemably, as their own separate and absolute properties in all time coming;] to ordain the pursuer and defender to execute and deliver such deeds and writings as may be necessary to complete the titles of the parties to their respective portions; and whether they subscribe such dispositions or conveyances or not, to adjudge the said subjects, together with the rents, maills and duties thereof, from and after the [*specify date*], with the titles and whole writs and evidents of and connected with the said subjects or the rents thereof from the pursuer and defender, and to decern and declare the same to belong to the purchaser or purchasers to be held in like manner and as freely as the pursuer and defender or their authors held the same, and to ordain the defender to pay the pursuer one-half of the expense incurred in prosecuting and obtaining the said division, and of the process to follow hereon.

CONDESCENDENCE

Parties; lands; joint ownership; titles; failure of parties to concur in division; facts necessitating sale rather than division.

PLEAS IN LAW

1. The pursuer and defender being *pro indiviso* proprietors of the said subjects, the pursuer is entitled to decree of division of the same.

2. In the circumstances condescended on, the subjects should be sold and the price divided as craved.

XII. SEQUESTRATION FOR RENT

1. Writ of Sequestration for Rent

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to sequestrate and to grant warrant to officers of Court to inventory and secure the whole stock, fittings, furniture, goods and other effects, so far as subject to the pursuer's hypothec, which are or have been in the premises occupied by the defender at No. ,

since in security and for payment to the pursuer, (1) of the sum of £ sterling, being the half-year's rent thereof, due and payable at the term of , with interest thereon at the rate of 5 per centum per annum from said term till payment, and expenses; and (2) of the like sum of £ sterling, being the current half-year's rent to become due and payable at next, with interest as aforesaid from the said term of , and expenses; and thereafter to grant warrant to sell by public roup the whole, or so much of the sequestrated effects as will satisfy and pay to the pursuer the said rents, interest, and expenses, the term of being first come and bygone before selling for the rent then to become due, and interest and expenses; and to appoint payment to be made to the pursuer of the rents, interest, and expenses aforesaid out of the proceeds of any sale or sales, or out of any sums consigned to have the sequestration recalled; and to decern against the defender for said rents, when due interest and expenses, in the event of no sale taking place, or for such balance as may remain due to the pursuer after sequestration and sale, and payment of expenses and all preferable claims therefrom; and in the event of the subject of the hypothec being exhausted, or the premises being insufficiently furnished and hypothecated after any sale hereunder, to ordain the defender to stock and replenish said premises so as to afford sufficient security for payment of any remaining rent payable, or to become payable as aforesaid, or to find caution for said rent; and, failing his doing so within such time and at the sight of such person as the Court shall appoint, to grant warrant summarily to eject the defender and his goods, gear, and effects from the said premises; and to authorise the pursuer to re-let the same for such periods and for such rent as may appear best; and to decern against the defender for payment of any balance of said rents and expenses that may be due by him and not previously have been decerned for; and to grant warrant to arrest on the dependence.

[*Note*.—Where the effects have been removed a crave in terms of the following minute for warrant to carry back may be included in the foregoing prayer.]

CONDESCENDENCE

Parties; lease; duration; rent; arrears (if rent not yet due, facts justifying sequestration in security).

PLEAS IN LAW

1. The defender being due to the pursuer the rent sued for, the pursuer is entitled to decree therefor, and to sequestration in security as craved.

2. In the event of the sequestered effects being insufficient to meet the rent, the pursuer is entitled to warrant to plenish, eject and re-let, as craved.

2. Minute for Warrant to Carry Back Furniture Removed from Hypothec

In respect that C. D., defender, within designed, has removed from the dwelling-house situated at _____, within mentioned, the furniture, goods, and effects belonging to him which were therein, and subject to the pursuer's right of hypothec for the rent of the said house due at [*term*] last, to premises situated at _____ (now occupied by him [*or occupied by* _____]), under cover of night, and without any notice to the pursuer, warrant is craved to officers of Court to search for and carry back to the said house at _____, the said furniture, goods, and effects, removed as aforesaid, and which consist of [*state articles*], there to be inventoried and secured in terms of the within warrant. And further, in respect that the defender's right of occupancy of the said house has come to an end, warrant is craved thereafter to remove the said furniture, goods, and effects to [*specify where*], or to such other place as the Court may appoint, there to await the further orders of the Court.

3. Minute for Order to Replenish

— Sheriffdom of _____ at _____.

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

A. B. for the pursuer, stated that after carrying out the sale, which had taken place under warrant of the Court, for the rent due at Martinmas, there remained no effects on the premises adequate to afford the pursuer security for the rent to become due at Whitsunday next, and he craved the Court to ordain the defender to replenish in terms of the crave of the writ; and failing his doing so within such short period as the Court should appoint, to grant warrant to eject and re-let, all in terms of the crave of the writ.

4. Application by Owner of Effects Wrongly Sequestered for Rent

Sheriffdom of _____ at _____ .

Minute of Compearance

for

A. B. [*design him*], Compearer,

In process of sequestration for rent,

C. D. [*design him*], Pursuer,

against

E. F. [*design him*], Defender.

A. B., above designed, craves the Court to allow him to compear in the cause. The compearer is a lodger with the defender, and the piano, easy-chair, and walnut card-table, Nos. _____ in the inventory in said sequestration, are his property, and have been erroneously included in the sequestration; and he craves that *quoad* them the sequestration should be recalled.

5. Application for Order to Plenish

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to ordain the defender to plenish the dwelling-house, No. _____ Street, Edinburgh, let by the pursuer to the defender from _____ to _____ , with furniture to an extent sufficient to afford security for £ _____ sterling, being the amount of the half-year's rent of said premises to become due to the pursuer at the term of _____ , or to find caution for payment of said sum; and in the event of the defender failing to plenish or find caution within such time as the Court shall appoint, to ordain the defender to flit and remove himself, his wife, family, servants and dependants, with their goods and effects, from said dwelling-house, and to make the same

void and redd to the pursuer that he may enter thereto and peaceably possess and enjoy the same in all time coming, and that under the pain of ejection; and to find the defender liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; let of house; period; rent; failure of defender to plenish, or find caution; necessity for application.

PLEAS IN LAW

1. The defender having failed to plenish the said house, the pursuer is entitled to have him ordained to do so, or to find caution for payment of the rent.

2. In the event of the defender failing to plenish or find caution as ordered, warrant of removing and ejection should be granted as craved.

XIII. REMOVINGS

[*Note.*—See statutory forms in connection with removings and ejections annexed to Act of 1907. Appendix, p. 333.]

1. Writ of Ejection of Squatter

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant warrant to officers of Court summarily to eject the defender and his goods, gear, and effects from the lands of , and to make the same void and redd, that the pursuer or others in his name may enter into and peaceably possess and enjoy the same; and to find the defender liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; pursuer's ownership of lands; title; defender's occupation; no right or title; possession vitious or precarious; refusal to remove.

PLEA IN LAW

The defender having no right or title to occupy the said lands, the pursuer is entitled to decree of ejection as craved.

2. Writ of Summary Ejection

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant warrant to officers of Court summarily to eject the defender, his family and servants, with their goods, and gear, and whole belongings furth and from the house [*describe it*], and to leave the same void and redd, that the pursuer, or others in his name, may enter thereto and peaceably possess and enjoy the same; and to find the defender liable in expenses; and to decern therefor.

CONDESCENDENCE

Parties; lease; expiry of tenancy; notice to terminate; defender's refusal or failure to leave.

PLEA IN LAW

The defender's right of occupancy of the said house having expired, and the requisite warning to remove having been given, the pursuer is entitled to decree of ejection as craved.

3. Writ of Removal for Non-payment of Rent

Agricultural Holdings (Scotland) Act, 1908, sec. 17

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to ordain the defender to flit and remove himself, his family, servants, sub-tenants, cottars and dependants, with their cattle, goods, and gear furth and from the farm of _____, and that at the

term of _____, under pain of ejection; and further, to grant a decree against the defender for payment to the pursuer of £ _____ sterling, with interest thereon at the rate of 5 per centum per annum from the _____ day of _____ till payment; and to find the defender liable in expenses; and to decern therefor; and to grant warrant to arrest on the dependence.

CONDESCENDENCE

Parties; lease; duration; rent; arrears.

PLEAS IN LAW

1. The defender being in arrear to the extent of six months in payment of his rent for said farm, the pursuer is entitled to decree of removal as craved.

2. The defender being due and resting owing the said arrears of rent, decree therefor should be granted as craved.

4. Writ of Declarator of Irritancy and Removing

Sheriffdom of _____

at _____

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to find and declare that in respect of the bankruptcy of the defender he has incurred an irritancy of the lease of the dwelling-house No. _____ Street, Edinburgh, and that the said lease is now accordingly null and void; to ordain the defender to remove himself, his family and servants, with their goods, gear, and whole belongings furth and from the said dwelling-house, and to leave the same void and redd, under pain of ejection; and to find the defender liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; lease; duration; provisions in event of tenant's bankruptcy; bankruptcy of defender; irritancy incurred.

PLEA IN LAW

The defender by his said bankruptcy having incurred an irritancy of the said lease as condescended on, the pursuer is entitled to decree of declarator and removing as craved.

XIV. POINDING OF THE GROUND

Writ of Poinding of the Ground

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Proprietor of the subjects and others afterwards described, and E. F., G. H., and J. K. [*design them*], Tenants and Occupants of said subjects, Defenders.

The pursuer craves the Court to grant warrant to officers of Court, charging them conjunctly and severally to pass, and in name and authority of the Court search for, seek, fence, arrest, appraise, compel, poind and distrain, all and sundry the readiest moveable goods, gear, corn, cattle, horses, sheep, plenishing, household furniture, machinery, fittings, plant, stock in trade, and all other effects poindable or distrainable of the defenders, being or that shall happen to be on All and Whole [*describe subjects in the bond, or as the case may be*], or in the houses, buildings, and other erections thereon (but, in so far as relates to the said defenders, other than the said C. D., proprietor, to the amount only of the rents which in the course of the proceedings to follow hereon may be found to be due and payable by them respectively), and to pay the same to the pursuer in satisfaction or to account of the sum of £ _____ sterling contained in and due by a bond and disposition in security granted by the defender C. D. to the pursuer, dated _____ and recorded in [*state register and date*], with interest on said principal sum at the rate of _____ per centum per annum, payable at _____ and half-yearly and termly at each term of Whitsunday and Martinmas thereafter till paid (the terms of payment being first come and bygone), and to see the pursuer satisfied of and paid the same; to find the defender the said C. D. liable in expenses; and to find any of the other defenders liable in expenses, but that only in the event of their offering opposition hereto, and to decern therefor; and meantime to grant warrant to officers of Court to inventory the said goods, gear, and other effects.

[*Note*.—Warrant to inventory requires the signature of the Sheriff.]

CONDESCENDENCE

Parties; bond and disposition in security; obligations thereunder; subjects conveyed in security; failure to pay; amount due; tenants and their rents.

PLEA IN LAW

The principal sum and interest thereon due under said bond being resting owing to the pursuer, he is entitled to warrant as craved.

XV. MAILLS AND DUTIES

1. Writ of Mailles and Duties

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to find and declare that he is entitled to the rents, mailles and duties of the subjects specified in the bond and disposition in security for £ _____ sterling, granted by _____ in favour of _____, dated the _____ and recorded in the [*register and date*] or at least as much thereof as will satisfy and pay the pursuer the principal sum of £ _____ sterling, with interest thereon at the rate of _____ per centum per annum from the _____ day of _____, liquidate penalty and termly failures as specified in the said bond and disposition in security; and to find the defender liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; bond and disposition in security; obligations thereunder; subjects conveyed in security; failure to pay; amount due.

PLEA IN LAW

The defender having failed to pay to the pursuer the sums due under said bond and disposition in security, the pursuer is entitled to decree of mailles and duties as craved.

2. Notice to Tenant of Presentment of Writ of Mailles and Duties

Heritable Securities (Scotland) Act, 1894, sec. 3, Schedule (B)

In the Sheriff Court of _____ at _____ .

NOTICE

An action has been raised of this date [*specify place and date*], in the above Court, at the instance of A. B. [*design him*], pursuer, against C. D. [*design him*], defender, in which the said pursuer asks that it be declared that, as holding a bond and disposition in security over the subjects situated at [*here give such description of the subjects, e.g. their name or the number of the street in which they are situated, as may identify them*], he has right to the rent due, current, and to become due from the subjects.

Should you, after receiving this notice, pay your rent to the defender, you will do so at the risk of having to pay again to the pursuer should he obtain decree in the action.

(*To be signed by the pursuer, or his law agent, or messenger-at-arms, or sheriff-officer.*)

3. Notice to Tenant of Decree of Maills and Duties

Heritable Securities (Scotland) Act, 1894, sec. 3, Schedule (C)

In the Sheriff Court of _____ at _____ .

NOTICE

Decree having been obtained of this date [*specify place and date*], in the above Court, at the instance of A. B. [*design him*], pursuer, against C. D. [*design him*], defender, finding and declaring that the pursuer has right to the rents, maills and duties of the subjects and others situated at [*here give such description of the subjects, e.g. their name or the number of street in which they are situated, as may identify them*], specified in a bond and disposition in security for £ _____ sterling, granted by in favour of _____, dated _____ and recorded in the

Register _____ you are hereby notified of the same, and desired and required to make payment to the said A. B. of the rents, maills and duties due by you in respect of the occupancy of said subjects or part thereof.

(*To be signed by the pursuer, or his law agent, or messenger-at-arms, or sheriff-officer.*)

XVI. PETITIONS FOR SEQUESTRATION

1. Petition for Sequestration at the Instance of the Debtor

Sheriffdom of _____ at _____ .

A. B. [*design him*], with concurrence of C. D. and E. F. [*design them*], Pursuer.

The pursuer craves the Court to award sequestration of the estates which now belong or shall hereafter belong to him before the date of his discharge, and to declare the said estates to belong to his creditors for the purposes of the Bankruptcy (Scotland) Act, 1913, and to appoint a meeting of the said creditors to be held to elect a trustee on the estates of the pursuer, or trustees in succession, and commissioners; and to do the other acts provided by the said statute.

CONDESCENDENCE

1. The pursuer is unable to pay his debts, and is notour bankrupt (*or* the affairs of the pursuer have become embarrassed, and he is under the necessity of applying for sequestration of his estates). He is subject to the jurisdiction of the Court of Session.

2. The pursuer has resided (or has carried on business) in the county of _____ for the year preceding the date of the presentation of this petition.

3. The said C. D. is a creditor of the pursuer to the extent of £ _____ sterling. The said E. F. is a creditor of the pursuer to the extent of £ _____ sterling. Oaths by the said C. D. and E. F. and relative vouchers consisting of [*describe them shortly*] are herewith produced. The said C. D. and E. F. concur in this application.

PLEA IN LAW

The affairs of the pursuer having become embarrassed, he is entitled to have sequestration of his estates awarded.

2. Petition for Sequestration at the Instance of a Creditor

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant warrant for citing the defender, in terms of the Bankruptcy (Scotland) Act, 1913, to appear before the Court to show cause why sequestration of his estates should not be awarded; to direct intimation of the said warrant, and of the *induciæ*, to be made in the *Edinburgh Gazette*; to grant diligence to recover evidence of the notour bankruptcy of the defender and of the other facts necessary to be established; and, on again considering this application, to award sequestration of the estates which now belong, or shall hereafter belong, to the defender before the date of his discharge, and to declare the said estates to

belong to his creditors for the purposes of the Bankruptcy (Scotland) Act, 1913; and to appoint a meeting of the said creditors to be held to elect a trustee on the estates of the defender, or trustees in succession, and commissioners; and to do the other acts provided by the said statute. (*Should a factor be necessary, add: And further to nominate and appoint [name and designation], or such other suitable person as the Court may think fit, as judicial factor on the said estates until a trustee shall be confirmed thereon, or until the petition is otherwise disposed of, with the usual powers, he always finding caution before extract.*)

CONDESCENDENCE

1. The defender has been rendered notour bankrupt within the last four months and still remains in a state of notour bankruptcy. He has for the year before the date of the presentation of this application resided (*or carried on business*) within the county of . He is subject to the jurisdiction of the Court of Session.

2. The pursuer is a creditor of the defender above designed to the extent of £ sterling, conform to oath and bill [*or as the case may be*] herewith produced.

[3. *If appointment of factor is asked, state the grounds of application, e.g.*] The estates of the defender consist mainly of his stock in trade, which is of a perishable nature [*or as the case may be*], and it is necessary for the preservation of the estate that a factor *ad interim* should be appointed.

PLEA IN LAW

The defender being notour bankrupt, the pursuer, as a duly qualified creditor, is entitled to sequestration of his estates as craved.

3. Petition for Summary Sequestration at the Instance of a Debtor

Sheriffdom of at .

A. B. [*design him*], Pursuer.

The pursuer craves the Court to award sequestration of the estates which now belong or shall hereafter belong to him before the date of his discharge, and to declare the said estates to belong to his creditors for the purposes of the Bankruptcy (Scotland) Act, 1913; and to appoint a meeting of the said creditors to be held to elect a trustee on his estates, or trustees in succession, and commissioners, and to do the other acts provided by the said statute; and to order that the sequestration shall proceed as a summary sequestration.

CONDESCENDENCE

1. The pursuer has resided (*or* has carried on business) during the year immediately preceding the date of the presentation of this petition within the county of . He is subject to the jurisdiction of the Court of Session.

2. The affairs of the pursuer have become embarrassed, and he is under the necessity of applying for sequestration of his estates.

3. The pursuer has lodged in the hands of the sheriff-clerk, with this petition, a state of his affairs in terms of the Bankruptcy (Scotland) Act, 1913.

4. The pursuer's assets do not in the aggregate exceed £300 in value, and he is desirous that the sequestration should proceed as a summary sequestration.

PLEAS IN LAW

1. The affairs of the pursuer having become embarrassed, he is entitled to have sequestration of his estates awarded.

2. In respect that the pursuer's assets do not exceed £300 in value, an order for summary sequestration should be pronounced as craved.

4. Petition for Summary Sequestration at the Instance of a Creditor or Creditors

Sheriffdom of

at

A. B. [*design him*], Pursuer; or A. B. and C. D. [*design them*],
Pursuers,

against

E. F. [*design him*], Defender.

The pursuer craves the Court to grant warrant for citing the defender in terms of the Bankruptcy (Scotland) Act, 1913, to appear before the Court to show cause why sequestration of his estates should not be awarded, to direct intimation of the said warrant and of the *induciæ* to be made in the *Edinburgh Gazette*, to ordain the defender to lodge in the hands of the clerk of Court a state of his affairs, subscribed by himself, in terms of the said statute, and to grant diligence to recover evidence of the notour bankruptcy of the defender, and of the other facts necessary to be established; and on again considering this application, to award sequestration of the estates which now belong, or shall hereafter belong, to the defender before the date of his discharge, and to declare the said estates to belong to his creditors for the purposes of the Bankruptcy (Scotland) Act, 1913, and to appoint a meeting of the said creditors to be held to elect a trustee on the estates of the defender, or trustees in

succession, and commissioners; and to do the other acts provided by the said statute; and to order that the sequestration shall proceed as a summary sequestration.

CONDESCENDENCE

1. The defender has been rendered notour bankrupt within four months preceding the date of the presentation of this petition, and still remains in a state of notour bankruptcy. He has during the year immediately preceding the said date resided (*or* carried on business) within the county of . He is subject to the jurisdiction of the Court of Session.

2. The pursuer is a creditor of the defender to the extent of £ sterling, conform to oath and account (*or as the case may be*) herewith produced (*or*, the pursuer A. B. is a creditor of the defender to the extent of £ sterling, and the pursuer C. D. is a creditor to the extent of £ sterling, conform to oaths by them respectively and relative bills (*or as the case may be*) herewith produced).

3. The pursuer believes and avers that the assets of the said defender do not in the aggregate exceed £300 in value, and he desires that an order be pronounced that the sequestration shall proceed as a summary sequestration.

PLEAS IN LAW

1. The defender being notour bankrupt, the pursuer as a duly qualified creditor is entitled to an award of sequestration of his estates.

2. In respect that the defender's assets do not exceed £300 in value, an order for summary sequestration should be pronounced as craved.

XVII. WRITS UNDER WORKMEN'S COMPENSATION ACT

1. Application for Compensation for Death

A. B. C. D. and E. F. [*design them*], Pursuers,

against

G. H. [*design him*] Defender.

The pursuers crave the Court to make an award against the defender for payment to the pursuers of the sum of £ being the statutory compensation to which the pursuers are entitled under the Workmen's Compensation Act, 1906, in consequence of the death of E. F. [*state relationship to the*

pursuers] who died on or about _____ as the result of
 personal injury sustained by him on _____ by accident
 arising out of and in the course of his employment with
 the defenders on _____ and to find the defender liable
 to the pursuers in expenses.

CONDESCENDENCE

Pursuers and their relationship to workman; defenders; workman in employment of defenders; work on which he was employed at time of accident; particulars of accident and death; accident arose out of and in course of employment; pursuers dependent on deceased's earnings at the date of death; wholly or partially dependent; workman's earnings; notice of accident given; claim for compensation made; refused; amount claimed; application necessary.

PLEA IN LAW

The deceased _____ having died as the result of injuries sustained by him by accident arising out of and in the course of his employment with the defender, and the pursuers being [*wholly or partially*] dependent on his earnings at the time of his death, the pursuers are entitled to compensation as craved.

2. Application for Weekly Compensation

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to make an award against the defender for payment to the pursuer of the sum of one pound per week commencing the first payment on _____ as the compensation payable by the defender to the pursuer under the Workmen's Compensation Act, 1906, in respect of personal injuries sustained by the pursuer on _____ by accident arising out of and in the course of his employment with the defender, and to find the defender liable to the pursuer in expenses.

CONDESCENDENCE

Parties; pursuer in defender's employment; nature of work; narrate date, place, and circumstances of accident and nature of injuries; pursuer totally incapacitated for work as result; average weekly earnings prior to accident; notice of accident given; claim made; refused; application necessary.

PLEA IN LAW

The pursuer having sustained personal injuries by accident arising out of and in the course of his employment with the defender as condescended on and being totally incapacitated for work as the result thereof, is entitled to compensation as craved.

3. Application for Review of Weekly Payment

Minute for Review

for

C. D. [*design him*], Respondent,

in claim against him

under the Workmen's Compensation Act, 1906,

by

A. B. [*design him*], Claimant,

against

the said C. D.

for the respondent stated that on or about the claimant was in the employment of the respondent as a and on said date sustained injury by accident arising out of and in the course of his employment [*state nature of accident and injury*]. The respondent admitted liability to pay compensation to the claimant, and agreed to pay him and he accepted £ per week, which sum has since been paid to him. A memorandum of said agreement was recorded on in the special register kept for the purpose by the sheriff-clerk of ; a certified copy of said memorandum is produced herewith. The claimant's average weekly earnings prior to the accident were . The claimant is now and has for some time entirely recovered from his injuries, is fit for his ordinary work and able to earn the same wages as he earned before the accident [*or, the claimant has now partially recovered from his injuries and is fit for light work*]. The respondent therefore craves the Court to review the weekly compensation payable to the claimant and to end the same [*or, and to diminish the same*], and to find the claimant liable to the respondent in expenses.

4. Application for Reference to Medical Referee

Minute for the Parties

for

Reference to Medical Referee

in claim under the

Workmen's Compensation Act, 1906,

by

A. B. [*design him*], Claimant,

against

C. D. [*design him*], Respondent.

In respect that the said A. B., on _____, received injuries, viz. [*state them*], while in the course of his employment with respondent at _____ and has been paid compensation therefor by the respondent, and in respect the respondent avers that claimant has entirely recovered his capacity for work [*or, has partially recovered his capacity for work and is fit for light work*], which contention the claimant denies and avers that he is still unfit for any work, and the parties being at variance and no agreement being likely to be arrived at, therefore the said A. B. and the said C. D. crave the Court in terms of paragraph 15 of the First Schedule of the Workmen's Compensation Act, 1906, to refer the matter to one of the medical referees under the Act [*add if desired*—including in such reference whether any incapacity from which the said A. B. may now suffer is due to said accident].

(Add if necessary)

The parties consent to the foregoing reference being proceeded with under Schedule I., paragraph 15, of the Workmen's Compensation Act, 1906, notwithstanding that the dates for the various steps of procedure have not been observed on either side.

(Signatures of parties or agents.)

XVIII. ARRESTMENTS

1. Application for Precept of Arrestment *jurisdictionis fundandæ causa*

Sheriffdom of _____ at _____
 A. B. [*design him*], Pursuer,
 against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant warrant to the Clerk of Court to issue a precept of arrestment at the pursuer's instance *jurisdictionis fundandæ causa*, authorising arrestment of all goods, debts, money or other moveable property belonging to the defender situated within the County of _____, all to remain under arrestment *jurisdictionis fundandæ causa*.

CONDESCENDENCE

Parties; claim by pursuer against defender; necessity for action; defender not subject to jurisdiction of Scottish Courts; moveable property belonging to him in the county; intention to withdraw same.

PLEA IN LAW

The defender being indebted to the pursuer and not being subject to the jurisdiction of the Scottish Courts, the pursuer is entitled to the warrant craved.

2. Precept of Arrestment *ad fundandam jurisdictionem*

E. F., Esquire, King's Counsel, Sheriff of _____, to _____, officers of Court, executors hereof, jointly and severally, hereby specially constituted, greeting: WHEREAS it is humbly meant and shown to me by A. B. [*design him*], Pursuer, against C. D. [*design him*], Defender, That the Defender is due the pursuer the sum of £ _____ sterling, being the price of goods sold on or about _____, for which the pursuer is about to raise action against him, and that the defender is not subject to the jurisdiction of the Courts of Scotland, but has goods, debts, money or other moveable property belonging to him within the County of _____, as is alleged. The pursuer therefore applied by writ of application, in the Sheriff Court of _____, at _____, for warrant to arrest *ad fundandam jurisdictionem*—upon presenting of which writ to _____, Esquire, Advocate,

my Substitute, he, upon the day and date hereof, granted warrant in manner and to the effect underwritten: HEREOF it is my will, that this my precept seen, ye pass, and in His Majesty's name and authority and mine, lawfully fence and arrest all and sundry the goods, debts, money, and all other moveable property, pertaining and belonging or indebted and owing to the said defender, wherever the same may be found, within the County of _____, all to remain under sure fence and arrestment at the said pursuer's instance, *ad fundandam jurisdictionem*, as accords of law. The which to do I hereby commit to you, and each of you, full power and warrant by this my precept, given and subscribed by the clerk of Court at _____, the _____ day of _____, nineteen hundred and _____ years.

3. Precept of Arrestment in Security

E. F., Esquire, King's Counsel, Sheriff of _____, to _____, officers of Court, executors hereof, conjointly and severally, specially constituted, greeting: WHEREAS it is humbly meant and shown to me by A. B. [*design him*], Complainer, that by bill, dated the _____ day of _____, drawn by him upon and accepted by C. D. [*design him*], he ordered the said acceptor _____ months after date to pay to the order of the complainer the sum of £ _____ sterling for value received, as the said bill in itself bears, and that the said acceptor intends, as the complainer is informed, to sell, dilapidate, and put away his moveable effects, debts, and sums of money whatsoever, in defraud and prejudice of the complainer, unless remeid be provided thereagainst: HEREOF it is my will, and I command you, that on sight hereof ye pass, and in His Majesty's name and authority and in mine lawfully fence and arrest the whole readiest moveable goods, gear, effects, debts and sums of money, and all other moveable effects whatsoever, belonging or addebted to the said C. D., wherever or in whose hands soever the same can be found, all to remain always under sure fence and arrestment at the instance of the said complainer, aye and until sufficient caution be found acted in the books of Court, that the same shall be made forthcoming to the pursuer as accords of law; which to do I commit to you, conjointly and severally, full power, by this my precept, subscribed by the clerk of Court at _____ the _____ day of _____.

4. Application for Recall or Restriction of Arrestment

Sheriffdom of _____ at _____.

A. B. [*design him*], Pursuer,
against

C. D. [*design him*], Defender.

The pursuer craves the Court to recall or restrict the arrestment in the hands of E. F. used by the defender on (*date*), upon the dependence of an action of damages for slander raised by the present defender against the present pursuer, and that upon caution or without caution as to the Court shall seem fit; and to find the defender liable in expenses, and to decern therefor.

[*Note*.—If only restriction is desired it may be obtained in the original action by Minute and motion.]

CONDESCENDENCE

Parties; action raised by the defender; arrestment used; prejudice to pursuer; willing to find caution if necessary; in any event amount oppressive.

PLEA IN LAW

The said arrestment being nimious and oppressive, the pursuer is entitled to have the same recalled or restricted as craved.

XIX. MISCELLANEOUS APPLICATIONS

1. Application for Nomination of Arbiter

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to nominate an arbiter to determine the sum to be paid to the pursuer by the defender in respect of [*state claim in question*] and to find defender liable in expenses.

CONDESCENDENCE

Parties; contract; provision as to arbitration; question that has arisen; refusal of defender to arbitrate or to nominate arbiter.

PLEA IN LAW

In terms of the contract founded on the claim referred to falls to be settled by arbitration, and the defender having refused or delayed to nominate an arbiter, the pursuer is entitled to decree as craved.

2. Application for Warrant to Cite Witnesses and Havers in Arbitration

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,

The pursuer craves the Court to grant warrant to cite witnesses and havers on his behalf to appear before _____ as arbiter in the submission pending between the pursuer and C. D. under a deed of submission by them dated _____, and that within _____, on _____, and at such other places and on such other days as the said _____ may appoint, to give evidence for the pursuer in regard to matters admitted to probation, as also to bring with them and produce all such documents and books in their possession falling within the specification lodged herewith as they may be called on to produce under certification as effeirs; and in the event of any of them failing to appear after due citation, to grant warrant for the issue of letters of second diligence at the pursuer's instance against such parties in common form of law.

CONDESCENDENCE

Submission; acceptance by arbiter; order for proof (*quote order*); specification of documents; approval by arbiter; necessity for application.

PLEA IN LAW

In respect of the order condescended on, the pursuer is entitled to obtain warrant to cite witnesses and havers as craved.

3. Application for Commission to take Evidence to lie in retentis

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant warrant to take the evidence, to lie *in retentis*, of E. F. [*design him*] and G. H. [*design him*] as witnesses for the pursuer in the action raised at his instance against the said C. D., and presently pending in this Court.

CONDESCENDENCE

Parties; action in dependence; E. F. and G. H. important witnesses; necessity for application, *e.g.* witnesses going abroad, or other ground of their evidence being in danger of being lost.

PLEA IN LAW

The witnesses named being about to leave Scotland [*or as the case may be*], the pursuer is entitled to have their evidence taken, to lie *in retentis*.

NOTE.—*Formal application is only necessary previous to defences being lodged. At a later stage a motion in the cause is sufficient.*

4. Application to Disinter Body

Sheriffdom of

at

A. B. [*design him*], Pursuer, with consent and concurrence of C. D., E. F., and G. H. [*design them*].

The pursuer craves the Court to grant warrant to the Superintendent of the Cemetery to disinter the body of the deceased X. Y. [*design him*], which was interred in the lair No. , belonging to , on , in order that it may be removed to the cemetery at for interment therein, with all necessary powers; and to find any person opposing the crave hereof liable in expenses, and to decern therefor.

CONDESCENDENCE

Petitioner; relationship to deceased; date of death; place of interment; proposed place of re-interment; reasons for desiring interment in other ground; disinterment feasible; concurrence of relatives.

PLEA IN LAW

The pursuers being desirous of having the body of the said interred in , and the disinterment and removal of the body being feasible, warrant should be granted as craved.

5. Application for Removal of Trustee under Trusts (Scotland) Act, 1921

Sheriffdom of _____ at _____.

A. B. [*design him*], C. D. [*design him*], and E. F. [*design him*], trustees acting under the trust disposition and settlement of the deceased R. S. [*design him*], dated _____, and recorded in the Books of Council and Session _____, Pursuers,

against

G. H. [*design him*], Defender.

The pursuers crave the Court to find and declare that the defender has become incapable of acting as a trustee under the trust disposition and settlement above mentioned, and to remove him from said office in terms of section 23 of the Trusts (Scotland) Act, 1921.

CONDESCENDENCE

Parties; appointment as trustees; absence of defender from United Kingdom for more than six months (or other facts necessary under the statute); expediency of removal.

PLEA IN LAW

The defender, having been absent from the United Kingdom for upwards of six months preceding the date of this application [*or as the case may be*], ought to be removed from office as trustee as craved.

6. Application for Warrant to Sell Articles left in Store

Sheriffdom of _____ at _____.

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant warrant to him to remove from his store at _____, to the premises of an auctioneer to be named by the Court, the following articles deposited by the defender in said store on or about _____, viz. :--[*enumerate them*]; to grant warrant to sell the said articles by public roup, and to appoint the free proceeds of the sale after deduction of the storage dues of said articles,

and of the expenses of this application and the sale to follow hereon, to be consigned in the hands of the clerk of Court to await the orders of Court; and to find the defender liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; deposit of articles by defender; storage due; disappearance of depositor; inquiries made; failure of defender to remove articles; necessity for application.

PLEA IN LAW

The defender having deposited the said articles with the pursuer, and having failed to take possession thereof or to pay the storage dues therefor, the pursuer is, in the circumstances stated, entitled to obtain warrant as craved.

7. Application under Presumption of Life Act

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

C. D., E. F., and G. H. [*design them*], Defenders.

The pursuer craves the Court to find that X. Y. [*design him*] has disappeared, that he has not been known to be alive after , that he died or must be presumed to have died on ; and to find any defenders offering opposition here- to liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; relationship to X. Y.; date of X. Y. leaving this country; history of his movements thereafter; correspondence with persons at home; latest communication; endeavours made to trace him; advertisements and other inquiries; property belonging to him; value, and where situated; domicile; interest of pursuer in his estate.

PLEA IN LAW

In the circumstances condescended on the pursuer is entitled to decree as craved

8. Application for Appointment of *Curator bonis*

Sheriffdom of _____ at _____ .

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], and also against E. F. and G. H. [*design them*],
Defenders.

The pursuer craves the Court to find that the yearly value of the estate belonging to C. D. [*design him*] does not exceed £100 sterling, and to nominate and appoint X. Y., or such other person as the Court shall think proper, to be *curator bonis* to the said C. D. in terms of the Judicial Factors (Scotland) Acts and relative Act of Sederunt; and to find the pursuer entitled to the expenses of this application out of the estate of the said C. D.; and to find any person opposing the crave hereof liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; relationship to C. D.; C. D. of unsound mind and incapable of managing his affairs; medical certificates produced; estate belonging to him; value thereof; necessity for application; defenders are nearest relatives.

PLEA IN LAW

The said C. D. being of unsound mind and unable to manage his affairs, a *curator bonis* ought to be appointed to him.

9. Application for Discharge of *Curator*

Sheriffdom of _____ at _____ .

A. B. [*design him*], *Curator bonis* appointed by the Sheriff of _____
at _____ to C. D. [*design him*], conform to
decree dated _____ , extracted _____ , Pursuer.

against

C. D. [*design him*], Defender.

The pursuer craves the Court to find that said curatory has come to an end; to remit to the Accountant of Court to examine and report upon his accounts, thereafter to approve of the pursuer's whole actings as curator, and to exoner and discharge him; to grant warrant for delivery of the

bond of caution, and to find the pursuer entitled to the expenses of this application out of the curatory estates.

CONDESCENDENCE

Appointment of pursuer as curator; date; acceptance of office; discharge of duties; majority of ward; termination of the curatory.

PLEA IN LAW

The said curatory having come to an end by the majority of the said C. D. [*or as the case may be*], the pursuer is entitled to exoneration and discharge as craved.

10. Application for Appointment of Judicial Factor on Estate of Person Deceased

Sheriffdom of

at

A. B. [*design him*], Pursuer,

against

E. F., G. H., etc. [*design them*], Defenders.

The pursuer craves the Court to nominate and appoint X. Y. [*design him*], or such other person as the Court shall think proper, to be Judicial Factor on the estate of the deceased J. K. [*design him*], in terms of the Bankruptcy (Scotland) Act, 1913, sec. 163, he always finding caution before extract; and to find the pursuer entitled to the expenses of this application out of the said estate, and to find any person opposing the crave hereof liable in expenses and to decern therefor.

CONDESCENDENCE

1. The deceased J. K. died at upon .
He left no settlement appointing trustees or other parties to manage his estate or any part thereof [*or leaving a settlement [describe it] under which he appointed to be his trustees. The said have declined to accept office (or have not acted under the said appointment) (or as the case may be)*].

2. The pursuer is a creditor of the said deceased J. K. to the extent of in respect of (*describe the debt and set forth evidence thereof*) [*or the pursuer is a beneficiary in the estate of the said deceased J. K. (state the nature of the interest of the pursuer in the succession, as the case may be)*].

3. The said J. K. died possessed of the following estate so far as known to the pursuer (*specify particulars and values*). The amount of the said estate is estimated not to exceed £500.

4. The said J. K. resided (*or carried on business as a*)
at (*state place within the sheriffdom*), during the year

immediately preceding the presentation of this petition, [*or the deceased at the time of his death possessed heritage consisting of (mention the property and situation within the sheriffdom)*].

5. The whole parties who have an interest in the estate of the deceased are, so far as known to the pursuer, the following:—*(name and design them and state the nature of their interest in the succession, either in intestacy or under any settlement left by deceased)*.

6. The following persons are, to the best of the pursuer's knowledge and belief, all the creditors of the deceased *(name and design them)*.

7. In the circumstances condescended on it is necessary that a Judicial Factor should be appointed to administer the estate of the deceased. The petitioner is entitled to make the present application in terms of the Bankruptcy (Scotland) Act, 1913, sec. 163.

PLEA IN LAW

The said J. K. having died without leaving any settlement appointing trustees or other parties to manage his estate [*or as the case may be*], the pursuer is entitled to have a Judicial Factor appointed thereon as craved.

Gazette Notice

To the creditors and other persons interested in the succession of the deceased J. K. [*name and design him*].

A petition has been presented in the Sheriff Court of _____ at _____ under the Bankruptcy (Scotland) Act, 1913, sec. 163, at the instance of [*state pursuer, and whether a creditor or a party interested in the succession*], craving the appointment of a judicial factor upon the estate of the said J. K., who died on _____, having left no settlement appointing trustees or other parties to manage his estate [*or as the case may be*]. All parties interested are required to lodge answers to the petition, if so advised, in the hands of the Sheriff-Clerk at _____ within _____ days after the publication hereof.

11. Application for Suspension of Charge on Protest of Bill

Sheriffdom of _____ at _____.

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer craves the Court, on such caution as the Court shall fix, to sist diligence on an extract registered protest from

the Books of Court, and warrant thereon dated the _____, obtained by the defender against the pursuer, under which the pursuer was charged, on or about _____, to pay to the defender the sum of £ _____ sterling, alleged to be contained in the bill specified in said extract, to suspend said charge and diligence, and to find the defender liable in expenses, and to decern therefor.

CONDESCENDENCE

Parties; bill; charge by defender upon pursuer; schedule of charge produced; no value given for bill; pursuer not due any sum thereunder; willingness to find caution.

PLEA IN LAW

The said bill having been granted by the pursuer for the accommodation of the defender, the pursuer is entitled to have the charge and diligence in the said extract protest suspended as craved.

12. Application for Warrant of Imprisonment under Alimentary Decree

Sheriffdom of _____ at _____

A. B. [*design her*], Pursuer,
against

C. D. [*design him*], Defender.

The pursuer craves the Court to grant warrant for the imprisonment of the defender in terms of the Civil Imprisonment (Scotland) Act, 1882, in respect of his failure to pay to the pursuer the sum of £ _____ sterling, being aliment contained in a decree of the Sheriff Court of _____, dated _____, obtained at the instance of the pursuer against the defender.

CONDESCENDENCE

Parties; decree obtained by pursuer against defender; charge thereon; date; amount due; failure to pay; expiry of charge.

PLEA IN LAW

The defender having wilfully failed to pay the said sums of aliment decerned for, and the charge for payment having expired, warrant for his imprisonment ought to be granted as craved.

Note.—The general practice is to make application, not in the foregoing form but by a Minute, which may be in the following form :—

Sheriffdom of _____ at _____ .

Under The Civil Imprisonment (Scotland) Act, 1882.

MINUTE BY THE PURSUER

For Warrant to Imprison under Decree of Filiation and Aliment,

in the action at the instance of

A. B. [*design her*], Pursuer,

against

C. D. [*design him*], Defender.

In respect of the defender's wilful failure to pay within the days of charge the sum or sums of aliment, together with the expenses of process, for which decree was pronounced against him on _____, amounting to _____ sterling, conform to execution of charge, dated the _____ day of _____, herewith produced, warrant is craved to commit the defender to prison for a period not exceeding six weeks, or until payment of said sum or sums of aliment and expenses of process decerned for, or such instalment or instalments thereof as the Court may appoint, or until the pursuer is otherwise satisfied, all in terms of The Civil Imprisonment (Scotland) Act, 1882.

13. Application for Warrant to Register Marriage

(1) Petition

Sheriffdom of _____ at _____ .

A. B. [*design him*], and

C. D. or B., his wife, Pursuers and Applicants.

The applicants crave the Court to certify in terms of the Act 19 & 20 Vict. c. 96, that they were married to one another at the time and place and before the witnesses set forth in the condescendence hereto annexed, and that both of the applicants [*or as the case may be*] had resided in Scotland for the period of twenty-one days immediately preceding said marriage, and to grant warrant to the Registrar of

Birth, Deaths, and Marriages for the district of _____,
 in the city of _____, to enter said Marriage in the
 Register Book of Marriages kept by him, in terms of the
 Act 17 & 18 Vict. c. 80.

CONDESCENDENCE

1. On _____ at _____,
 Edinburgh, the applicants contracted a marriage with one another
 by accepting each other as husband and wife, and declaring them-
 selves to be married to each other, and by signing the Acknowledg-
 ment and Declaration to that effect which is prefixed hereto, in
 presence of these witnesses [*name and design them*].

2. Both the applicants [*or as the case may be*] had resided in
 Scotland for the period of twenty-one days immediately preceding
 said marriage. There is produced herewith the schedule of par-
 ticulars for the Registration of said marriage, as required by
 statute.

PLEA IN LAW

The applicants having contracted the marriage condescended
 on, and there having been the necessary residence in Scotland,
 they are entitled to the certificates and warrant prayed for.

[*To be signed*] A. B.,
 C. B.,

Pursuers and Applicants.

(2) Declaration of Marriage

I [*name, address, and designation*], have, on the date hereof, at
 _____, accepted and do hereby accept _____,
 residing at _____, as my wife; and I, the said _____,
 have at the same time and place accepted and do hereby accept the
 said _____ as my husband; and we both declare
 ourselves to be married the one to the other.

IN WITNESS WHEREOF, we have subscribed this declaration at
 _____, on the _____, before these witnesses _____.

[*To be signed*] A. B.
 C. D.

(3) Proof

At _____, the _____ day of _____,
 Nineteen hundred and _____ years. In presence of _____,
 _____ Esquire,
 Sheriff-Substitute of _____.
 Appeared the applicants (*name them*).

Compeared _____, who,
 being solemnly sworn and being interrogated, DEPONES :
 I was present this day at _____, when I heard
 the applicants, whom I now see in attendance, accept each
 other as husband and wife, and declare themselves to be
 married to each other, and saw them sign the Acknowledg-
 ment and Declaration to that effect, now shown me, which
 is prefixed hereto, and I know that _____
 applicant(s) had resided in Scotland for the period of
 twenty-one days immediately preceding said marriage. All
 which I depone to be truth as I shall answer to God.

Compeared also _____, who,
 being solemnly sworn and being interrogated, DEPONES :
 I was present this day at _____, when I heard
 the applicants, whom I now see in attendance, accept each
 other as husband and wife, and declare themselves to be
 married to each other, and saw them sign the Acknowledg-
 ment and Declaration to that effect, now shown me, which
 is prefixed hereto, and I know that _____
 applicant(s) had resided in Scotland for the period of twenty-one days
 immediately preceding said marriage. All which I depone
 to be truth as I shall answer to God.

[*Place and date*].—The Sheriff-Substitute having considered the
 application, with the relative Acknowledgment and Declaration, and
 the evidence above recorded, certifies and grants warrant all
 as craved.

14. Appeal against Resolution of Town Council—Burgh Police (Scotland) Act, 1892, sec. 339

Sheriffdom of _____ at _____

A. B. [*design him*], Pursuer,

against

The Provost, Magistrates, and Councillors of the Burgh of _____
 , Defenders.

The pursuer craves the Court to recall a resolution (*or* order
or notice [*or as the case may be*]) passed by the defenders
 on or about _____, which resolution is in the following
 terms :—[*quote*] and to find the defenders liable in expenses,
 and to decern therefor.

CONDESCENDENCE

Parties; resolution or order; facts on which objections based;
 grounds of appeal.

PLEAS IN LAW

1. The said resolution, being *ultra vires*, should be recalled as craved.

2. The pursuer not being proprietor of the said subjects, the said resolution is not operative against him, and ought to be recalled.

XX. FORMS OF MINUTES, ETC.

1. Minute of Reference to Oath

Sheriffdom of _____ at _____

Minute of Reference to Oath

in causa

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer refers the cause to the oath of the defender;

or,

The pursuer refers to the oath of the defender the averments contained in the _____ articles of the condescendence;

or,

The pursuer refers the constitution and resting-owing of the debt sued for to the oath of the defender _____, [*or as the case may be*].

A. B., Pursuer,

or

X. Y. [*design him*],
Agent for Pursuer.

2. Minute of Abandonment

Sheriffdom of _____ at _____

Minute of Abandonment

in causa

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer offers to abandon the cause in terms of the Sheriff Courts (Scotland) Act, 1907.

3. Minute of Judicial Reference

Sheriffdom of _____ at _____ .

Minute of Judicial Reference

in causa

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The parties hereby submit the matters in issue to the amicable decision of E. F. [*design him*], as judicial referee, and crave the Court to remit the cause to the said E. F., reserving the question of expenses for the decision of the Court, [*or including all questions of expenses*].

4. Minute of Wakening by Agents of both Parties:— to be written on Interlocutor Sheet

We, the Agents for the parties, consent to the cause being wakened and proceeded with.

5. Minute craving Wakening

Sheriffdom of _____ at _____ .

Minute of Wakening for Pursuer

in causa

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

X., for the pursuer, stated that no interlocutor had been pronounced in the cause since _____, and that it had fallen asleep; and the pursuer, being desirous to have it wakened and proceeded with, he craved the Court to waken the cause in terms of the Sheriff Courts (Scotland) Act, 1907.

6. Minute of Tender

Sheriffdom of _____ at _____

Minute of Tender for Defender

in causa

A. B. [*design him*], Pursuer,
against

C. D. [*design him*], Defender.

The defender hereby tenders to the pursuer the sum of £ _____ sterling in full of the sum sued for, with expenses to date.

Or,

The defender, without prejudice to his rights and pleas, and without admitting liability, hereby tenders to the pursuer the sum of £ _____ sterling, with expenses to date, in full satisfaction and settlement of his claim.

7. Minute of Acceptance of Tender

Sheriffdom of _____ at _____

Minute of Acceptance of Tender

in causa

A. B. [*design him*], Pursuer,

against

C. D. [*design him*], Defender.

The pursuer hereby accepts the sum of £ _____ sterling, with expenses, as tendered by the defender in minute No. _____ of process.

8. Minute for Warrant of Concurrence for Executing Diligence

Debtors (Scotland) Act, 1838, Schedule No. 10

(Place and date.)

Warrant of concurrence by the Sheriff of _____ is craved at the instance of [*specify name and designation of applicant*] for executing the within warrant against the within designed [*specify name of debtor or obligant*].

9. Minute by Assignee for Warrant for Diligence on Decree

Debtors (Scotland) Act, 1838, Schedule No. 9

(*Place and date.*)

Warrant is craved [*to arrest, charge, and poind*], at the instance of [*specify name and designation of the applicant*], as [*assignee or otherwise, as the case may be*], of [*specify name and designation of the person at whose instance the extract was issued and in whose right the applicant is*], produced herewith [*say assignation or confirmation or other legal evidence of the acquired right, as the case may be*], dated the _____ day of _____.

10. Minute for Warrant to Imprison on a Decree ad factum præstandum

Debtors (Scotland) Act, 1838, Schedule No. 8

(*Place and date.*)

The charge being expired and registered as per execution and certificate produced, warrant is craved to search for, take, and apprehend the person of the said A. [*name of debtor or obligant*]; and being so apprehended, to imprison him within a Tolbooth or other warding place, therein to remain until he fulfil the said charge; and, if necessary for that purpose, to open shut and lockfast places; and warrant also to magistrates and keepers of prisons to receive and detain the said A. accordingly.

11. Caveat against Sale under Poinding

Sheriffdom of _____

at _____

Caveat for A. B. [*design him*].

Should any application be presented at the instance of C. D. [*design him*], or any one representing him, against the said A. B., for warrant to sell the effects poinded within the shop [*state where situated*], on the _____ day of _____, under warrant upon decree of the Sheriff Court of _____, dated _____, obtained at the instance of the said C. D. against the said A. B.,

it is requested that notice thereof be given to the subscriber, who will show cause why the application should not be granted.

12. Caveat against Sequestration

Should any application for sequestration of the estates of A. B. [*design him*] be presented, it is requested that notice thereof be given to the subscriber, who will show cause why sequestration should not be awarded.

XXI. SMALL DEBT APPEAL

Appeal in Small Debt Action

Unto the Right Honourable the Lord Justice General, Lord Justice-Clerk, and Lords Commissioners of Justiciary.

The Appeal of

A. B. [*design him*], Appellant,

against

C. D. [*design him*], Respondent.

Humbly sheweth,—That the appellant raised in the Small Debt Court of the Sheriffdom of , at , an action against the respondent for payment of the sum of £ sterling, being price of a bicycle sold by pursuer to defender on or about . The hearing of said action took place before , Esq., Sheriff-Substitute of , at , on .

At the said hearing the defender admitted the purchase of said bicycle, but he pleaded as a defence to payment that the same was disconform to representations alleged by him to have been made by the pursuer, to the effect that . The pursuer denied having made any such representation, and was prepared to lead counter-evidence to this effect.

The Sheriff-Substitute without allowing or hearing any evidence made a remit to to examine the said bicycle, and to report. The pursuer objected to the said remit. The said , on or about , reported as follows:—[*Take in terms of report.*].

Upon said report being lodged the Sheriff-Substitute without hearing parties thereon granted absolvitor to the defender, with expenses.

The appellant conceives himself aggrieved by said decree of absolutor, and now appeals thereagainst in terms of 1 Vict. c. 41, sec. 30, and relative statutes, for the following among other reasons to be stated at the hearing of the appeal, viz. [*state articulately the objections founded upon*].

May it therefore please your Lordships to sustain the appeal, to recall the judgment complained of, to remit the cause back to the Sheriff-Substitute to hear evidence in the said cause, and to proceed therewith in due and proper form; and to find the appellant entitled to expenses against the respondent both in the inferior Court and in your Lordships' Court; or to do further or otherwise in the premises as to your Lordships shall seem proper.

According to Justice, etc.

XXII. FORM OF ACCOUNT OF EXPENSES IN ORDINARY ACTION

[*Note*.—The charges are regulated by the Codifying Act of Sederunt, M, ii., printed in Appendix I., p. 392. As to expenses generally, see Chapter XVII., p. 250.]

1. UNDEFENDED ACTION

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
	£0 13 4	£1 1 0
Taking instructions	to	to
	1 1 0	1 11 6
Drawing writ, per sheet	0 4 0	0 6 0
Fair copy writ, per sheet	0 1 0	0 1 6
Court dues	0 10 0	0 10 0
Copy writ for service, per sheet	0 0 6	0 0 9
Copy warrant, per sheet	0 1 0	0 1 6
Agency serving	0 2 6	0 2 6
Borrowing with certificate of no appearance, and returning	0 1 6	0 2 3
Framing account of expenses, per sheet	0 1 6	0 2 0
Copy, per sheet	0 1 6	0 2 0
Lodging for taxation	0 3 4	0 5 0
Attending taxation	0 5 0	0 6 8
Paid Auditor's fee	0 2 6	0 2 6
Framing minute craving decree	0 4 0	0 6 0
Copy thereof	0 1 0	0 1 6
Attendance obtaining decree in absence	0 5 0	0 6 8
Copy interlocutor	0 1 0	0 1 6
Copy for client	0 1 0	0 1 6
Ordering and procuring extract	0 3 4	0 6 8
Process fee	0 10 6	1 1 0
Posts and incidents	0 1 6	0 2 6

2. DEFENDED ACTION

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
Taking instructions	{ £0 13 4 to 1 11 6	{ £1 1 0 to 2 2 0
Instructing medical man to report in action arising out of personal injury	0 3 4	0 5 0
Paid his fee		
Considering report	0 5 0	0 6 8
Drawing writ, per sheet	0 4 0	0 6 0
Copy writ, per sheet	0 1 0	0 1 6
(If special order obtained, <i>e.g.</i> interim interdict or sequestration), lodging and procuring deliverance	0 5 0	0 6 8
Court dues	0 10 0	0 10 0
Copy writ for service, per sheet	0 0 6	0 0 9
Copy warrant to cite, per sheet	0 1 0	0 1 6
Agency serving	0 2 6	0 2 6
Certified copy writ, per sheet	0 1 0	0 1 6
Inquiring for defences	0 2 0	0 2 6
Borrowing process and returning	0 1 6	0 2 3
Copy adjustments for other side, per sheet	0 1 0	0 1 6
Writing therewith	0 2 6	0 3 4
Copies for principal and certified writ, per sheet	0 1 0	0 1 6
Borrowing and returning	0 1 6	0 2 3
Preparing for, and attendance at closing record	{ 0 10 6 to 1 1 0	{ 1 1 0 to 2 2 0
Court dues	0 10 0	0 10 0
Copy interlocutor closing	0 1 0	0 1 6
Copy for client	0 1 0	0 1 6
Framing inventory of productions, per sheet	0 2 0	0 3 0
Fair copy	0 1 0	0 1 6
Lodging	0 2 0	0 2 6
Borrowing and returning process	0 1 6	0 2 3
Copy record for agent, per sheet	0 1 0	0 1 6
Copy record for process, per sheet	0 0 6	0 0 9
Copy productions lodged, per sheet	0 1 0	0 1 6
Debating case on preliminary pleas (or on pro- cedure, when debate ordered)	{ 0 10 6 to 1 11 6	{ 1 1 0 to 2 12 6
Inquiries at avizandum, interlocutor making remit	0 2 6	0 3 4
Copy interlocutor	0 1 0	0 1 6
Copy for client	0 1 0	0 1 6
Noting same	0 2 6	0 3 4
Borrowing and returning process	0 1 6	0 2 3
If remit made:—Copy interlocutor for reporter	0 1 0	0 1 6
Agency obtaining certified	0 2 6	0 3 4
Attendance on reporter with proceedings	0 3 4	0 5 0
Attendance at hearing before reporter, one hour	0 6 8	0 10 0
Attendance getting up report	0 3 4	0 5 0
Paid reporter's fees		
Perusing and considering report	0 5 0	0 6 8

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
Lodging report	£0 2 0	£0 2 6
Drawing inventory of productions therewith, per sheet	0 2 0	0 3 0
Fair copy, per sheet	0 1 0	0 1 6
Lodging	0 2 0	0 2 6
Copy productions, per sheet	0 1 0	0 1 6
Enrolling and intimating	0 1 6	0 2 6
Attendance calling, parties appointed to be heard on report on debate roll	0 5 0	0 6 8
Debating case on report	0 10 6	1 1 0
	to	to
	1 11 6	2 12 6
Inquiries, interlocutor allowing proof	0 2 6	0 3 4
Noting same	0 2 6	0 3 4
Copy, per sheet	0 1 0	0 1 6
Copy for client, per sheet	0 1 0	0 1 6
Enrolling and intimating	0 1 6	0 2 6
Attendance calling, diet of proof fixed	0 5 0	0 6 8
Copy interlocutor	0 1 0	0 1 6
Copy for client	0 1 0	0 1 6
Perusing and considering specification of docu- ments called for by defender	0 5 0	0 6 8
Drawing specification of documents for pursuer, per sheet	0 4 0	0 6 0
Fair copy	0 1 0	0 1 6
Agency lodging	0 2 0	0 2 6
Copy for defender, per sheet	0 0 6	0 0 9
Enrolling and intimating	0 1 6	0 2 6
Attending calling, diligence and commission granted	0 5 0	0 6 8
Copy interlocutor	0 1 0	0 1 6
Copy for client	0 1 0	0 1 6
Agency obtaining certified and copy	0 3 4	0 5 0
Borrowing and returning process	0 1 6	0 2 3
Attendance on Commissioner fixing diet and intimating	0 5 0	0 6 8
Agency citing havers (each haver after first, 1s.)	0 1 6	0 1 6
Copies or excerpts of specifications, for haver (each copy after first, one-half), per sheet	0 1 0	0 1 6
Attendance at examination, one hour	0 6 8	0 10 0
Paid fees to havers		
Attendance settling same (not to exceed)	0 6 8	0 10 0
Attendance taking up report and productions	0 3 4	0 5 0
Paid Commissioner's and Clerk's fees		
Perusing and considering report	0 5 0	0 6 8
Lodging report	0 2 0	0 2 6
Inventory of productions therewith, per sheet	0 2 0	0 3 0
Fair copy	0 1 0	0 1 6
Lodging same	0 2 0	0 2 6

[If diligence not carried out, attendance on opposite agent examining papers falling under specification and arranging as to productions. Charges for meetings and correspondence as per table.]

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
Instructions for precognitions	£0 13 4 to 1 1 0	£1 1 0 to 1 11 6
Instructing architect for plan, or skilled witness for report	0 6 8	0 10 0
Drawing precognitions, viz. :—		
A. B., pursuer, per sheet	0 4 0	0 6 0
C. D., per sheet	0 4 0	0 6 0
Revising and adjusting report by skilled witness, per sheet	0 2 0	0 3 0
Travelling and personal expenses precognoscing .		
Copy precognitions, per sheet	0 1 0	0 1 6
Enrolling for commission to take evidence . . .	0 1 6	0 2 6
Inventory of productions	0 2 0	0 3 0
Fair copy	0 1 0	0 1 6
Lodging	0 2 0	0 2 6
Attendance calling, commission granted	0 5 0	0 6 8
Copy interlocutor	0 1 0	0 1 6
Copy to be certified and agency obtaining certified	0 3 4	0 5 0
Borrowing and returning process	0 1 6	0 2 3
Attendance on Commissioner fixing diet and intimating	0 5 0	0 6 8
Copy interlocutor fixing diet and getting certified	0 3 4	0 5 0
Agency citing witnesses (each witness after first, 1s.)	0 1 6	0 1 6
Attendance at examination, one hour	0 6 8	0 10 0
Attendance on Commissioner, getting up report .	0 3 4	0 5 0
Paid his fees and clerk		
Perusing and considering report	0 5 0	0 6 8
Agency lodging	0 2 0	0 2 6
Inventory of productions therewith, per sheet .	0 2 0	0 3 0
Copy	0 1 0	0 1 6
Agency lodging	0 2 0	0 2 6
Copy interlocutor fixing diet of proof and getting certified	0 3 4	0 5 0
Agency citing witnesses (each witness after first, 1s.)	0 1 6	0 1 6
Instructing shorthand writer	0 2 6	0 3 4
Borrowing and returning process	0 1 6	0 2 3
Meeting with opposite agent adjusting corre- spondence to be lodged	0 6 8	0 10 0
Preparing for proof	0 13 4 to 1 1 0	1 1 0 to 1 11 6
Copy productions, per sheet	0 1 0	0 1 6
Attendance at and conducting proof, per hour .	0 6 8	0 10 0
Debating case	1 1 0 to 2 2 0	2 2 0 to 4 4 0
Court dues, each day	0 5 0	0 5 0
Shorthand writer's account		

(When notes extended, 5s. per hour and 1s. 6d.
per sheet; when notes not extended, 6s. 8d.
per hour.)

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
Paid witnesses' fees (see Table of Fees, Chap. X., Appendix I., p. 409)		
Paid architect for plans (if produced or sanctioned)		
Agency settling witnesses' fees (not to exceed) .	£0 6 8	£0 10 0
Inventory of productions lodged at proof, per sheet	0 2 0	0 3 0
Fair copy, per sheet	0 1 0	0 1 6
Inquiries at avizandum	0 2 6	0 3 4
Copy interlocutor, per sheet	0 1 0	0 1 6
Agency noting	0 2 6	0 3 4
Copy for client, per sheet	0 1 0	0 1 6
Enrolling to have employment of counsel and skilled witnesses certified	0 1 6	0 2 6
Attendance calling, motion granted	0 5 0	0 6 8
Copy interlocutor	0 1 0	0 1 6
Inquiries for appeal	0 2 6	0 3 4
Or marking appeal	0 2 6	0 3 4
Court dues	0 10 0	0 10 0
[If appeal to Court of Session:—		
Instructing Edinburgh agent, and sending documents	0 6 8	0 10 0
Borrowing and returning process	0 1 6	0 2 3
Making copy proof, per sheet	0 1 0	0 1 6
Making copy additional productions, per sheet .	0 1 0	0 1 6
Inquiries; interlocutor appointing debate . . .	0 2 6	0 3 4
Noting same	0 2 6	0 3 4
Copy for client	0 1 0	0 1 6
Debating case on appeal	1 1 0	2 2 0
	to	to
Inquiries at avizandum, interlocutor adhering .	2 2 0	4 4 0
Agency noting	0 2 6	0 3 4
Copy interlocutor, per sheet	0 1 0	0 1 6
Copy for client, per sheet	0 1 0	0 1 6
Borrowing and returning process	0 1 6	0 2 3
Framing account of expenses, per sheet . . .	0 1 6	0 2 0
Fair copy, per sheet	0 1 6	0 2 0
Copy for opposite agent, per sheet	0 0 9	0 1 0
Lodging account, fixing diet and intimating .	0 3 4	0 5 0
Attendance at taxation, half an hour	0 5 0	0 6 8
Paid Auditor's fee (Table of Fees, Chap. XI., Appendix I., p. 410)		
Enrolling	0 1 6	0 2 6
Attendance calling, report approved and decree granted	0 5 0	0 6 8
Copy interlocutor	0 1 0	0 1 6
Borrowing productions	0 1 0	0 1 6
Process fee	0 10 6	1 1 0
	to	to
Ordering, procuring and examining extract .	1 1 0	2 2 0
Posts and incidents	0 3 4	0 6 8

IF CASE SETTLED

	Scale I. Not exceed- ing £50.	Scale II. Above £50.
Fee for meetings and correspondence between agents leading up to settlement—as Auditor may allow.		
Drawing joint minute, per sheet	£0 4 0	£0 6 0
Copy, per sheet	0 1 0	0 1 6
Lodging	0 2 0	0 2 6
Enrolling	0 1 6	0 2 6
Attendance calling, decree in terms of minute	0 5 0	0 6 8
<i>or</i>		
Perusing and considering tender and consulting client	0 6 8	0 10 0
Drawing minute of acceptance, per sheet	0 4 0	0 6 0
Copy, per sheet	0 1 0	0 1 6
Lodging	0 2 0	0 2 6
Enrolling	0 1 6	0 2 6
Attendance calling—decree in terms of minute of tender	0 5 0	0 6 8
Copy interlocutor	0 1 0	0 1 6
Copy for client	0 1 0	0 1 6

IN JURY TRIALS

Drawing motion for jury trial and copy	0 6 8
Enrolling	0 2 6
Court dues	1 0 0
Attendance at and conducting trial, per day	4 4 0
Lodging and intimating motion to apply verdict	0 3 4
Enrolling	0 2 6
Attendance moving to apply verdict	0 6 8

Note.—If the verdict is for less than £50, only a half of the above fees are allowed on taxation.

IF COUNSEL EMPLOYED

(If counsel authorised, take in the following entries before the attendance at proof.)

Copy record and precognitions for counsel, per sheet	0 0 6	0 0 9
Instructing counsel for consultation (if necessary)	0 5 0	0 6 8
Fee to him and clerk	2 7 0	2 7 0
Attendance at consultation	0 6 8	0 10 0
Instructing counsel for proof	0 10 0	0 13 4
Fee to him and clerk, say	5 12 6	5 12 6
	to	to
	10 17 6	10 17 6
List of papers sent counsel, and copy	0 3 0	0 4 6
If debate taken at later date, instructing counsel for debate	0 10 0	0 13 4
Fee to him and clerk, say	4 9 0	4 9 0
	to	to
	6 13 6	6 13 6
Copy of proof for counsel, per sheet	0 1 0	0 1 6

II. FORMS OF WRITS IN COMMISSARY APPLICATIONS

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II. FORMS OF COMMISSARY WRITS

I. APPLICATIONS FOR SPECIAL AUTHORITY TO ISSUE CONFIRMATION

1. Validity of Will Doubtful

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A., B., and C. [*design them*], Pursuers.

The pursuers crave the Court to grant warrant to the Commissary-Clerk to issue confirmation in their favour as executors-nominate of the deceased D. [*design him*].

[*To be signed*] A., Pursuer,

B., do.

C., do.

[*or*] X. Y. [*add designation and business address*], Pursuers' Agent.

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh [*or as the case may be*].

2. The said D. left a settlement [*describe it*], which (*or an extract of which*) is produced. The said settlement bears to have been duly executed in the presence of two witnesses; but it contains a number of deletions and interlineations which are not authenticated by any reference to them in the testing clause. In particular, the names of E., F., and G., inserted in said settlement as the names of his executors, are deleted, and the names of the pursuers are interlined above them. The said E., F., and G. have no interest in the deceased's succession, and have declined to claim the office of executor. The whole of said settlement, including the deletions and interlineations referred to, is in the handwriting of the said D. [*or otherwise as the case may be*].

3. The pursuers have prepared an inventory of the personal estate of the said D. with relative oath, which (*or a draft of which*) they now produce along with the said settlement (*or an extract of said settlement*).

PLEA IN LAW

The pursuers being executors nominated by the deceased D. are in the circumstances above set forth entitled to confirmation as craved.

[*To be signed as above.*]

I. APPLICATIONS FOR SPECIAL AUTHORITY TO ISSUE CONFIRMATION

In the following applications the foregoing form may be adopted, in each case Condescendence 2 being framed in accordance with the facts in each case.

2. Nomination of Executors not Express

2. By his settlement [*describe it*], which (*or* an extract of which) is herewith produced, the said D. conveyed his whole estate to the pursuers, instructed them "to pay his debts" and "to carry out his wishes as to the disposal of his property" as set forth in said settlement, but failed to make any express nomination of executors or trustees. From the terms used by the said D. and from the whole tenor of said settlement, however, it was evidently his intention that the pursuers should act as his executors.

3. Executors not Named

2. The said D. left a settlement [*describe it*], which (*or* an extract of which) is herewith produced, in which he appointed his "only sister and her children" to be his sole executors and universal legatories.

3. The only sister of the said D. was E. [*design her*], who predeceased him, and the pursuers are her only children.

4. Substitute Disponees, etc., not Named

2. By settlement [*describe it*] the said D. disposed and assigned his whole estate (*or* his whole personal estate, *or* the residue of his personal estate) to E., "his heirs and assignees" (*or* "his executors and representatives whomsoever"). The said E. predeceased the said D., and the pursuers are his children and sole next of kin, and as such his heirs *in mobilibus* (*or* the pursuers are the executors-nominate of the said E. under his settlement [*describe it*]). The pursuers are thus the substitute general disponees (*or* universal legatories *or* residuary legatees), and as such executors-nominate of the said D., conform to writs produced.

5. Executors not Designed

2. The said D. by his settlement [*describe it*], which (*or* an extract of which) is herewith produced, named [*quote names*] to be his executors, but did not design or describe them in any way, so as to identify them or distinguish them from other persons of the same names. The pursuers aver that they are the persons whom the said D. intended to appoint. They were and had been for many years intimate friends of the said D., and there were no other persons of the same names among his acquaintances.

6. Executors wrongly Named or Designed

2. The said D. by his settlement [*describe it*], which (*or* an extract of which) is herewith produced, nominated and appointed

I. APPLICATIONS FOR SPECIAL AUTHORITY TO ISSUE CONFIRMATION

6. Executors wrongly Named or Designed

the pursuers to be his executors. In said settlement the pursuer A. is erroneously named [*quote name*], and the pursuer B. is erroneously designed [*quote designation*]. (*Explain discrepancies and state grounds for holding that pursuers are the persons intended to be named.*)

7. Excluding Executor Abroad

2. The said D. by his settlement [*describe it*], which (or an extract of which) is herewith produced, nominated and appointed the pursuers along with E. [*design him*] to be his executors. The said E. is now resident in _____, and it has not yet been ascertained whether he will accept or decline said appointment, there not having been time to communicate with him on the subject. To delay confirmation until an answer from him can be obtained, would be injurious to the estate. He has no beneficial interest in the succession of the said D. [*or state extent of his interest*]. As the acting of the said E. as a trustee and executor while resident abroad would impede the execution of the trust, the pursuers, who are sufficient in number to carry out its purposes in the meantime, have advised the said E. to decline, under their obligation to assume him should he desire it on his return to this country [*or state the facts according to the circumstances of the case*].

8. Executor not Found

2. The said D. by his settlement [*describe it*], which (or an extract of which) is herewith produced, nominated and appointed the pursuers to be his executors along with E. [*design him*]. The said E. left this country some years ago, intending to go to _____, but no communication has ever been received from him by his friends here, and his present address cannot be ascertained [*mention briefly what means have been used to ascertain it*]. He has no beneficial interest in the deceased's estate [*or state extent of his interest*]. The pursuers are a majority of those named by the deceased [*or otherwise, as the case may be*]. The estate requires to be immediately realised and distributed for the benefit of those to whom the deceased has bequeathed it.

9. Objections Lodged

2. The said D. by his settlement [*describe it*] nominated and appointed the pursuers to be his executors, and they have applied for confirmation in the ordinary manner. Objections to the appointment have been lodged by C. [*design him*], and consequently confirmation cannot be issued without the special authority of the Court. (*Further averments will be framed so as to meet the objections raised.*)

I. APPLICATIONS FOR SPECIAL AUTHORITY TO ISSUE CONFIRMATION

10. Will Improbative, and Proof of Due Execution Required

2. The said D. by his settlement [*describe it*], subscribed by him and bearing to be attested by two witnesses subscribing, nominated and appointed the pursuers to be his executors. The subscribing witnesses to said settlement were [*give full names and designations*], and the subscriptions appended to said settlement are the genuine subscriptions of the said testator and of the said witnesses, but the designations of the said witnesses are not contained in the testing clause thereof, nor appended to their signatures. The said settlement having been recorded in the Books of Council and Session on [*date*], the designations of said witnesses cannot now be added, and in respect of this informality of execution of the said settlement and of its having been recorded as aforesaid, it has become necessary, before confirmation can be expedite, to apply to the Court in terms of the provisions of the 39th section of the Conveyancing (Scotland) Act, 1874, in order to prove the due execution of said settlement.

PLEA IN LAW

The said settlement having been duly executed by the said D., the pursuer, upon proof of the due execution thereof, is entitled to have confirmation issued as craved.

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

1. General Disponee, Universal Legatory, or Residuary Legatee by Succession

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. B. [*design him or her*], Pursuer.

The pursuer craves the Court to decern him executor-dative *qua* general disponee [or universal legatory, or residuary legatee] by succession to the deceased D. [*design him*].

[*To be signed*] A. B., Pursuer,

or

X. Y. [*add designation and business address*], Pursuer's Agent.

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh (or without any fixed or known domicile except that the same was in Scotland).

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

1. General Disponee, etc.

2. By settlement [*describe it*] produced, the said D. disposed and assigned his whole estate (*or* his whole personal estate, *or* the residue of his estate) to C., who survived him, but died without expediting confirmation to his estate. The pursuer is the executor-nominate (*or* dative) of the said C., and has expedite confirmation to his estate, including therein his interest in the estate of the said D., conform to confirmation [*describe it*], also herewith produced. The pursuer is thus the general disponee (*or* universal legatory *or* residuary legatee) of the said D. by succession to the said C.

PLEA IN LAW

The pursuer being general disponee [*or* universal legatory *or* residuary legatee as the case may be] of the said D. by succession to the said C., is entitled to be decerned as executor-dative as craved.

[*To be signed as above.*]

2. Next of Kin—Child

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. B. [*design him or her*], Pursuer.

The pursuer craves the Court to decern him executor-dative *qua* next of kin to the deceased D. [*design him*].

[*To be signed*] A. B., Pursuer,

or

X. Y. [*add designation and business address*], Pursuer's Agent.

CONDESCENDENCE

1. The late D. [*designation*], died at [*place*], on [*date*], and had at the time of his (*or* her) death his (*or* her) ordinary *or* principal domicile in the County of Edinburgh (*or* without any fixed *or* known domicile except that the same was in Scotland).

2. The pursuer is a son (*or* daughter) and one of the next of kin of the said D.

PLEA IN LAW

The pursuer being one of the next of kin of the said D., is entitled to be decerned his executor-dative as craved.

[*To be signed as above.*]

The foregoing form will be adopted in each of the following cases, Condescendence 2 being superseded by the statement given below as applicable to each case.

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

3. Next of Kin—Grandchild

2. The pursuer is a son (*or daughter*) of the late B. [*design him or her*], who was a son (*or daughter*) of the said D. and who predeceased him. The said D. was not survived by any other son or daughter. The pursuer is thus a grandson (*or granddaughter*), and one of the next of kin of the said D.

4. Next of Kin—Brother or Sister German

2. The pursuer is a brother (*or sister*) german of the said D., who died unmarried and without issue, and is thus one of his next of kin.

5. Next of Kin—Nephew or Niece, Full Blood

2. The pursuer is a nephew (*or niece*) of the said D., being a son (*or daughter*) of B. [*design him or her*], brother (*or sister*) german of the said D., who died unmarried and without issue, and who was not survived by any brothers or sisters german. The pursuer is thus one of his next of kin.

6. Next of Kin—Brother or Sister Consanguinean

2. The pursuer is a brother (*or sister*) consanguinean of the said D., who died unmarried and without issue, and without being survived by any brothers or sisters german or their descendants. The pursuer is thus one of his next of kin.

7. Next of Kin—Nephew or Niece, Half Blood

2. The pursuer is a nephew (*or niece*) by the half blood of the said D., being a son (*or daughter*) of B., who was a brother (*or sister*) consanguinean of the said D. The said D. died unmarried and without issue, and without leaving any brothers or sisters german, or their descendants, and without being survived by any brother or sister consanguinean. The pursuer is thus one of his next of kin.

8. Next of Kin—Father

2. The pursuer is the father of the said D., who died unmarried and without issue, and without leaving any brothers or sisters german or consanguinean, or descendants of such brother or sister. The pursuer is thus his next of kin.

9. Next of Kin—Uncle or Aunt, Full Blood

2. The pursuer is the paternal uncle (*or aunt*) of the said D., being a brother (*or sister*) of B., who was the father of the said D. The said D. died unmarried and without leaving issue, or

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

9. Next of Kin—Uncle or Aunt, Full Blood

any brothers or sisters german or consanguinean, or descendants of any such brother or sister, and predeceased by his father. The pursuer is thus one of the next of kin of the said D. The mother of the said D. predeceased him.

10. Next of Kin—Cousin German

2. The pursuer is a cousin german of the said D., being a son (*or* daughter) of B., who was a brother (*or* sister) of E., the father of the said D. The said D. died unmarried and without issue, and without leaving any brothers or sisters german or consanguinean, or descendants of any such brother or sister, and without being survived by his father or by any paternal uncles or aunts. The pursuer is thus one of the next of kin of the said D. The mother of the said D. predeceased him.

11. Next of Kin—Uncle or Aunt, Half Blood

2. The pursuer is the uncle (*or* aunt) by the half blood of the said D., being the brother (*or* sister) consanguinean of B., who was the father of the said D. The said D. died unmarried and without leaving issue, or any brothers or sisters german or consanguinean, or descendants of any such brother or sister, and predeceased by his father, who left no brothers or sisters german, or descendants of any such brother or sister (or none who survived the said D.). The pursuer is thus one of the next of kin of the said D. The mother of the said D. predeceased him.

12. Next of Kin—Cousins, Half Blood

2. The pursuer is a cousin by the half blood of the said D., being a son (*or* daughter) of B., who was a brother (*or* sister) consanguinean of E., the father of the said D. The said D. died unmarried and without leaving issue, or any brothers or sisters german or consanguinean, or descendants of any such brother or sister. His father predeceased him without leaving any brothers or sisters german, or descendants of any such brother or sister, or any brothers or sisters consanguinean (or none who survived the said D.). The pursuer is thus one of the next of kin of the said D. The mother of the said D. predeceased him.

13. Next of Kin—Grandfather

2. The pursuer is the paternal grandfather of the said D., who died unmarried and without issue, and without leaving any brothers or sisters german or consanguinean, or descendants of any such brother or sister, and predeceased by his father B., who left no brothers or sisters german or consanguinean, or descendants of any such brother or sister (or none who survived the said D.). The pursuer is thus next of kin of the said D. The mother of the said D. predeceased him.

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

14. Representative of the Next of Kin

In the crave, instead of "next of kin," insert "representative of the next of kin."

2. The said D. died unmarried and without issue, survived by his brother B., who was thus his next of kin, but who died without having expedite confirmation to his estate. The pursuer is the son and next of kin (*or* executor-nominate and universal legatory, conform to settlement [*describe it*] produced), and he is thus the representative of the said B., the next of kin of the said D.

PLEA IN LAW

The pursuer being the representative of one of the next of kin of the said D., is entitled to be decerned his executor-dative as craved.

15. Relict or Husband

In the crave, instead of "next of kin," insert "relict," or "husband."

2. The pursuer is the relict (*or* husband) of the said D.

PLEA IN LAW

The pursuer being the relict (*or* husband) of the said D., is entitled to be decerned his executor-dative as craved.

16. Creditor of Deceased

In the crave, instead of "next of kin," insert "creditor."

2. The pursuer is a creditor of the said D. to the extent of £ , conform to promissory note granted by the said D. in favour of the pursuer [*describe it*], *or* conform to bond by the said D. [*describe it*], to which the pursuer acquired right by assignation [*describe it*], (*or* conform to decree *cognitionis causa* by the Lords of Council and Session [*describe it*]), which (*or* an extract whereof) is herewith produced.

PLEA IN LAW

The pursuer being a creditor of the said D. as condescended on, is entitled to be decerned his executor-dative as craved.

Form of Intimation in "Gazette"

Notice.—A petition has been presented in the Sheriff Court at by A. [*name and designation*], for decerniture as executor-dative *qua* creditor (*funerator*) to the deceased D. [*name and designation*].

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

17. Creditor of Next of Kin

In the crave, instead of "next of kin," insert "creditor of next of kin."

2. The said D. died intestate, and was survived by B., his son and next of kin, who has declined (or delayed) to expedite confirmation to the estate of the said D. The pursuer is a creditor of the said B. to the extent of £ , conform to [*describe liquid ground of debt, as in Form No. 16*].

PLEA IN LAW

The pursuer being the creditor of B., one of the next of kin of the said D., is entitled to be decerned executor-dative of the said D. as craved.

For *Gazette* intimation, see Form No. 16.

18. Funerator

In the crave, instead of "next of kin," insert "funerator."

2. The pursuer is funerator of the said D., having taken charge of the arrangements for the funeral, and paid the undertaker's account, amounting to £ , which account duly discharged is herewith produced. The estate left by the said D. is of small amount, and is believed to be insufficient to pay his debts. He is not known to have left any will, and his only next of kin is B., who declines to apply for the office of executor [*or state under what other circumstances the application is made*].

PLEA IN LAW

The pursuer being the funerator of the said D., is entitled to be decerned his executor-dative as craved.

For *Gazette* intimation, see Form 16.

19. Legatee

In the crave, instead of "next of kin," insert "legatee."

2. By the settlement of the said D., which (or an extract of which) is herewith produced, dated , the said D. bequeathed to the pursuer a legacy of £ .

PLEA IN LAW

The pursuer as legatee foresaid is entitled to be decerned executor-dative of the said D. as craved.

20. Statutory Beneficiary—Father

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. B. [*design him*], Pursuer,

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

20. Statutory Beneficiary—Father

The pursuer craves the Court to decern him executor-dative *qua* father to the deceased D. [*design him*].

[*To be signed*] A. B., Pursuer,

or

X. Y. [*add designation and business address*], Pursuer's Agent.

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh (*or* without any fixed or known domicile except that the same was in Scotland).

2. The pursuer is the father of the said D., who died intestate, unmarried and without leaving issue, but survived by brothers or sisters (*or* their descendants); and the pursuer has right to one-half of his moveable estate.

PLEA IN LAW

The pursuer having right to share in the moveable succession of the said D. as condescended on, is entitled to be decerned his executor-dative as craved.

[*To be signed as above.*]

21. Statutory Beneficiary—Mother

In the crave, instead of "qua father," insert "qua mother."

2. The pursuer is the mother of the said D., who died intestate, unmarried and without leaving issue, and whose father predeceased him, but who was survived by brothers and sisters, and the pursuer has right to one-half of his moveable estate.

or

2. The pursuer is the mother of the said D., who died intestate, unmarried and without leaving issue. He was predeceased by his father, and by his brothers and sisters german and consanguinean, none of whom left any descendants. The pursuer is thus entitled to the moveable estate of the said D.

(See Intestate Moveable Succession (Scotland) Act, 1919.)

This and the succeeding forms will each be signed as above, Form 20.

22. Statutory Beneficiary—Brother or Sister Uterine

In the crave, instead of "qua father," insert "qua brother uterine" or "qua sister uterine."

2. The pursuer is a brother (*or* sister) uterine of the said D.,

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

22. Statutory Beneficiary—Brother or Sister Uterine

who died intestate, unmarried and without leaving issue, or any brothers or sisters german or consanguinean, or their descendants, and whose father and mother both predeceased him; and the pursuer has right along with his other brothers and sisters uterine (*if any*), and the descendants of a predeceasing brother (*or sister*) uterine (*if any*), to one-half of his moveable estate.

23. Statutory Beneficiary—Child of a Predeceasing Next of Kin

In the crave, instead of "qua father," insert "qua child of a predeceasing next of kin."

2. The surviving next of kin of the said D. were his brothers and sisters, he having died unmarried and without issue. The pursuer is a son (*or daughter*) of B., who was also a brother (*or sister*) of the said D., but predeceased him. The pursuer is thus a child of a predeceasing next of kin of the said D., and has right along with his brothers and sisters (*if any*) and the descendants of a brother (*or sister*) (*if any*) to the share of the moveable estate of the said D., to which the said B. would have been entitled had he (*or she*) survived the said D.

24. Minor and Pupil Next of Kin, with their Administrator in Law

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A., B., C., and E. [*design them*], all children of F. [*design him*], and the said F. as their administrator in law,—Pursuers.

The pursuers crave the Court to decern them executors-dative to the deceased D. [*design him*], the said A., B., C., and E. *qua* next of kin, and the said F. as their administrator in law.

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh (*or without any fixed or known domicile except that the same was in Scotland*).

2. The pursuers A., B., C., and E. are the nephews and nieces and next of kin of the said D., who died unmarried and without issue and predeceased by his only sister G., the mother of the pursuers. The said A. and B. are in minority, and the said C. and E. are in pupillarity. The said F. is their father and administrator in law.

PLEA IN LAW

The pursuers A., B., C., and E., being the next of kin of the said D., are entitled to be decerned his executors-dative; and the said F., being their father and administrator in law, is entitled to be decerned executor-dative along with them.

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

25. Minor and Pupil Next of Kin, with their Tutors and Curators

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A., B., C., and E. [*design them*], all children of the late F. [*design him*], and G. and H. [*design them*], tutors and curators to the said children, nominated and appointed by the said F. in his settlement [*describe it*], herewith produced,—Pursuers.

The pursuers crave the Court to decern them executors-dative to the deceased D. [*design him*], the said A., B., C., and E. *qua* next of kin, and the said G. and H. as their tutors and curators foresaid.

CONDESCENDENCE

1. The late D. [*design her*], died at [*place*], on [*date*], and had at the time of her death her ordinary or principal domicile in the County of Edinburgh (*or* without any fixed or known domicile except that the same was in Scotland).

2. The pursuers A., B., C., and E. are the children and only next of kin of the said D. The said A. and B. are in minority, and the said C. and E. are in pupillarity, and the said G. and H. are their tutors and curators foresaid.

PLEA IN LAW

The pursuers A., B., C., and E. being the next of kin of the said D. are entitled to be decerned her executors-dative, and the said G. and H., being their tutors and curators, are entitled to be decerned executors-dative along with them.

26. Minor and Pupil Next of Kin, with their Factor

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A., B., C., and E. [*design them*], and F., factor for them on the executry estate of D. after designed, appointed by the Sheriff-Substitute of Edinburgh, conform to appointment [*date*],—Pursuers.

The pursuers crave the Court to decern them executors-dative to the deceased D. [*design him*], the said A., B., C., and E. *qua* next of kin, and the said F. as their factor foresaid.

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

26. Minor and Pupil Next of Kin, etc.

County of Edinburgh (*or* without any fixed or known domicile except that the same was in Scotland).

2. The pursuers A., B., C., and E. are the children and next of kin of the said D., and the said F. is their factor foresaid.

PLEA IN LAW

The said A., B., C., and E. being the next of kin of the said D. are entitled to be decerned his executors-dative, and the said F. being factor for them on the executry estate of the said D., is entitled to be decerned along with them.

27. Factor for Minor and Pupil Next of Kin on Executry Estate

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. [*design him*], factor for B., C., E., and F. [*design them*], on the executry estate of D. after designed, appointed by the Sheriff-Substitute at Edinburgh, conform to appointment, dated _____,—Pursuer.

The pursuer craves the Court to decern him executor-dative to the deceased D. [*design him*], *qua* factor for his minor and pupil next of kin on his executry estate.

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh (*or* without any fixed or known domicile except that the same was in Scotland).

2. The said A. is factor as aforesaid for B., C., E., and F., who are the children and next of kin of the said deceased D. The said B. and C. are in minority, and the said E. and F. are in pupillarity.

PLEA IN LAW

The pursuer being factor for the said next of kin on the executry estate of the said D. as condescended on, is entitled to be decerned his executor-dative.

28. Curator bonis and Factor loco tutoris to Next of Kin

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. [*design him*], *curator bonis* to B. and C. [*design them*], and factor *loco tutoris* to E. and F. [*design them*], conform to Act and Decree of the Lords of Council and Session, dated _____,—Pursuer.

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

28. Curator bonis and Factor loco tutoris to Next of Kin

The pursuer craves the Court to decern him executor-dative to the late D. [*design him*], *qua curator bonis* and factor *loco tutoris* to his next of kin.

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh (*or* without any fixed or known domicile except that the same was in Scotland).

2. The pursuer is *curator bonis* and factor *loco tutoris* foresaid to the said B., C., E., and F., who are the children and next of kin of the said deceased D. Extract decree of his appointment is herewith produced.

PLEA IN LAW

The pursuer being *curator bonis* and factor *loco tutoris* to the next of kin of the said D., is entitled to be decerned his executor-dative as craved.

29. Judicial Factor on Deceased's Estate

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. [*design him*], judicial factor on the estate (or on the trust estate) of the late D. after designed, conform to Act and Decree of the Lords of Council and Session, dated
—Pursuer.

The pursuer craves the Court to decern him executor-dative to the deceased D. [*design him*], *qua* judicial factor on his estate (*or* on his trust estate).

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh (*or* without any fixed or known domicile except that the same was in Scotland).

2. The pursuer is judicial factor foresaid on the estate of the said D. (or on the trust estate of the said D. under his trust disposition [*describe it*], in which the said D. nominated and appointed B. and C. to be his trustees and executors, but who both declined to accept). Extract decree of his appointment is herewith produced.

PLEA IN LAW

The pursuer being judicial factor on the estate (*or* on the trust estate) of the said D., is entitled to be decerned his executor-dative.

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

30. English Law—Relict or Husband

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. B. [*design her or him*], Pursuer.

The pursuer craves the Court to decern her (*or him*) executor-dative *qua* relict (*or husband*) to the deceased D. [*design him*].

CONDESCENDENCE

1. The late D. [*design him or her*], died at [*place*], on [*date*], and had at the time of his (*or her*) death his (*or her*) ordinary or principal domicile furth of Scotland.

2. The pursuer is the relict (*or husband*) of the said D., who died intestate, and by the law of _____, where the said D. died domiciled, is entitled to the administration of his (*or her*) personal estate.

PLEA IN LAW

The pursuer being entitled by the law of the deceased's domicile to the administration of his (*or her*) personal estate, is entitled to be decerned his (*or her*) executor-dative as craved.

31. English Law—Child as Next of Kin

In the crave, instead of "qua relict," insert "qua next of kin."

2. The pursuer is the son (*or daughter*) of the said D., who died intestate, and whose wife (*or husband*) predeceased him (*or her*) [*or whose wife (or husband) survived him (or her), but has renounced the right to administer his (or her) estate*], and by the law of _____, where the said D. died domiciled, the pursuer is entitled to the administration of his (*or her*) personal estate.

32. English Law—Father

In the crave, instead of "qua relict," insert "qua father."

2. The pursuer is the father of the said D., who died a bachelor (*or a spinster*) and intestate, and by the law of _____ where the said D. died domiciled, the pursuer is entitled to the administration of his (*or her*) personal estate.

33. English Law—Mother

In the crave, instead of "qua relict," insert "qua mother."

2. The pursuer is the mother of the said D., who died a bachelor (*or a spinster*) without a father, and intestate, and by the law of _____, where the said D. died domiciled, the pursuer is entitled to the administration of his (*or her*) personal estate.

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

34. English Law—Brother or Sister as Next of Kin

In the crave, instead of "qua relict," insert "qua next of kin."

2. The pursuer is the brother (*or sister*) and next of kin of the said D., who died a bachelor (*or a spinster*) without parent, and intestate, and by the law of _____, where the deceased died domiciled, the pursuer is entitled to the administration of his (*or her*) personal estate.

35. Conform to Appointment in Foreign Court

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. B. [*design him*], Pursuer,

The pursuer craves the Court to decern him executor-dative *qua* brother, and administrator [*or curator on the succession, or other character, as the case may be*] of the deceased D. [*design him*].

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile furth of Scotland.

2. The pursuer is the brother of the said D., and administrator (*or curator*) of his personal estate appointed by [*describe the Court*], within whose jurisdiction the said D. died domiciled, conform to letters of administration (*or other writ instructing the appointment*) produced.

PLEA IN LAW

The pursuer having been appointed by the Court of the domicile of the said D. to be the administrator of his personal estate, is entitled to be decerned his executor-dative as craved.

36. Conform to Opinion on Foreign Law

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. B. [*design him*], Pursuer.

The pursuer craves the Court to decern him executor-dative *qua* [*insert character in terms of the opinion*] to the deceased D. [*design him*].

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

36. Conform to Opinion on Foreign Law

at the time of his death his ordinary or principal domicile furth of Scotland.

2. The pursuer is [*state relationship or other character giving right to the office in accordance with opinion*], and is by the law of _____, where the deceased died domiciled, entitled to the administration of his estate conform to opinion by B. [*name and description qualifying him to give such opinion*], herewith produced.

PLEA IN LAW

The pursuer being, according to the law of _____, entitled to the administration of the estate of the said D., is entitled to be decerned executor-dative as craved.

37. Domicile Uncertain—Applicant Alternatively Entitled

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. B. [*design him*], Pursuer.

The pursuer craves the Court to decern him executor-dative *qua* father [*or other character*] to the deceased D. [*design him*].

CONDESCENDENCE

1. The late D. [*design him*], sometime residing in Edinburgh, thereafter in New York, thereafter in Melbourne, died on a voyage from Melbourne to New York on [*date*], without any fixed or known domicile.

2. The pursuer is father of the said D., who died intestate, unmarried and without issue, and by the law of the State of New York and of the Colony of Victoria, as well as by the law of Scotland, in one or other of which countries the said D. died domiciled, the pursuer is entitled to the administration of his estate.

Opinions to the above effect by _____ and _____ are herewith produced.

PLEA IN LAW

The pursuer being entitled by the law of the deceased's domicile to the administration of his personal estate, is entitled to be decerned his executor-dative.

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

38. Authority Granted under Presumption of Life Limitation (Scotland) Act, 1891

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. and B. [*design them*], Pursuers.

The pursuers crave the Court to decern them executors-dative *qua* next of kin to D. [*design him*].

CONDESCENDENCE

1. The late D. [*design him*] is presumed to have died on the [*date fixed by the Court*], and was at said date domiciled in the County of Edinburgh (*or* without any fixed or known domicile except that the same was in Scotland).

2. By decree of the Lords of Council and Session (*or* of the Sheriff of) under the Presumption of Life Limitation (Scotland) Act, 1891, dated , it was found that the said D. should be presumed to have died on [*date*], conform to Extract Decree [*or* copy certified by Clerk of Court] produced.

3. The pursuers are brothers of the said D., who died intestate, unmarried and without issue, and are thus two of his next of kin.

FLEA IN LAW

The said D. having by the decree condescended on been presumed to have died as stated, the pursuers, being his next of kin, are entitled to be decerned his executors-dative as craved.

39. Ad omissa (et male appretiata)

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. B. [*design him*], Pursuer.

The pursuer craves the Court to decern him executor-dative *ad omissa (et male appretiata)* *qua* next of kin [*or other title, as the case may be*] to the deceased D. [*design him*].

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh [*or as the case may be*].

2. An inventory of the personal estate of the said D. was given up and recorded in the Court Books of the Commissariat of Edinburgh on [*date*], and confirmation thereof expedite on [*date*], in favour of B. [*design him*], as executor-dative *qua* next of kin

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

39. *Ad omissa (et male appretiata)*

[*or other character*] to the said D. (*or as executor-nominate of the said D. under his settlement [describe it]*).

3. There was omitted from said confirmation certain estate belonging to the said D. (and certain items of estate though included were undervalued therein), to which omitted estate (and to the omitted value of the said items) it is necessary that a title should now be made up by confirmation, in order to uplift and discharge the same.

4. The said B. is now deceased, and the pursuer is a son and next of kin of the said D. [*or other title, as the case may be*].

If the estate had been dealt with under the Small Estate Acts a statement such as the following should be substituted for Condescendence 4:—

4. The said confirmation was issued under the Act 57 & 58 Vict. c. 30. The amount of the estate omitted therefrom together with the sum therein confirmed will exceed the sum of £500. An eik to the confirmation cannot therefore be expedite in favour of the pursuer, and the present application has become necessary.

PLEA IN LAW

The pursuer being the next of kin (*or other title as the case may be*) of the said deceased D., and certain estate of the said estate being unconfirmed, he is entitled to be decerned his executor-dative *ad omissa et male appretiata*.

40. *Ad non executata*

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. [*design him*], Pursuer.

The pursuer craves the Court to decern him executor-dative *ad non executata qua* legatee [*or next of kin, or other title, as the case may be*] to the deceased D. [*design him*].

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh [*or as the case may be*].

2. An inventory of his personal estate was given up and recorded in the Court Books of the Commissariat of Edinburgh on [*date*], and confirmation thereof expedite on [*date*], in favour of B. [*design him*], as executor-nominate of the said D. under his settlement [*describe it*] (*or as executor-dative qua relict or next of kin, etc.*), decerned to him on [*date*].

II. APPLICATIONS FOR APPOINTMENT OF EXECUTOR-DATIVE

40. *Ad non executata*

3. The said B. has died, leaving part (*or* the whole) of the estate confirmed by him untransferred to the persons entitled thereto, part thereof being still unuplifted and part uplifted and reinvested, or remaining in the said executor's hands [*as the case may be*], and it is necessary that a title should now be made up by the appointment of an executor *ad non executata* to continue and complete the administration of the estate contained in said confirmation.

4. The pursuer is a son and next of kin of the said D. (*or* a legatee of the said D. under his will produced [*or other title, as the case may be*]).

PLEA IN LAW

The confirmation of the estate of the said D. having become inoperative as condescended on, the pursuer is entitled to be decerned executor-dative *ad non executata*.

III. APPLICATION FOR RECALL OF DECREE-DATIVE, AND TO BE SUBSTITUTED OR CONJOINED IN THE APPOINTMENT OF EXECUTOR

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. [*design him*], Pursuer.

The pursuer craves the Court to recall the decree-dative in favour of B. [*design him*], and to decern the pursuer as executor-dative *qua* next of kin to the deceased D. [*design him*], or otherwise to conjoin this application with the application at the instance of the said B., and to decern the pursuer along with the said B. executors-dative *qua* next of kin to the said D.

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh.

2. On an application presented in the Sheriff Court at Edinburgh by B. [*design her*], sister of the said defunct, the said B. was on [*date*], decerned executor-dative *qua* next of kin to the said D., but she has not yet extracted decree or expedite any confirmation thereon.

3. The pursuer is a brother of the said D., who died unmarried and without issue, and is thus also one of his next of kin.

III. APPLICATION FOR RECALL OF DECREE-DATIVE, AND TO BE SUBSTITUTED OR CONJOINED IN THE APPOINTMENT OF EXECUTOR

PLEA IN LAW

The pursuer being one of the next of kin of the said D. is entitled to have the decerniture in favour of the said B. recalled, and to be decerned executor-dative *qua* next of kin of the said D., or otherwise to be conjoined with the said B. in the said office.

IV. APPLICATION FOR APPOINTMENT OF FACTOR FOR MINOR AND PUPIL NEXT OF KIN ON EXECUTRY ESTATE

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. and B. [*design them*], children and next of kin of D. [*design him*], and C., E., F., and G. [*design them*],—Pursuers.

The pursuers crave the Court to appoint the said C. factor for the said A. and B. on the executry estate of the said D., with power to have himself decerned and confirmed as executor-dative to the said D. *qua* factor foresaid, for behoof of the said minor and pupil children and of all interested in said estate on his finding caution for his introductions therewith, and that the same shall be made forthcoming to the said minor and pupil children and all interested in common form, or to do further or otherwise in the premises as to the Court may appear right and proper.

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh [*or as the case may be*].

2. The said A. and B. are the only children and next of kin of the said D., and entitled to be his executors; but the said A. being in minority and the said B. in pupillarity, they have not the status which would qualify them in their own names to administer the personal estate of the said D., and having no tutors or curators or other legal guardians, it is necessary that a factor be appointed for them on said estate, to administer the same for behoof of said children and all interested.

3. The mother of the said A. and B. predeceased their father, and the pursuers C. and E. are the paternal uncle and aunt and the pursuers F. and G. the maternal grandparents of the said A. and B.

IV. APPLICATION FOR APPOINTMENT OF FACTOR FOR MINOR
AND PUPIL NEXT OF KIN ON EXECUTRY ESTATE

PLEA IN LAW

The pursuers A. and B. being the children and next of kin of the said D., and being in minority and pupillarity as condescended on, and having no legal guardians, they are entitled to have a factor appointed for them on said executry estate as craved.

V. APPLICATION FOR RESTRICTION OF CAUTION

Sheriffdom of The Lothians and Peebles, at Edinburgh.

A. [*design him*], Pursuer, Executor-Dative of B. [*design him*].

The pursuer craves the Court to restrict the caution to be found by him as executor-dative foresaid to the sum of £ ,
or to such other sum as to the Court shall seem proper.

CONDESCENDENCE

1. The late D. [*design him*], died at [*place*], on [*date*], and had at the time of his death his ordinary or principal domicile in the County of Edinburgh [*or as the case may be*].

2. The pursuer was decerned executor-dative *qua* to the said D. on [*date*], and has since prepared and given up an inventory of his personal estate, amounting in value to £ sterling, and craved confirmation thereof. Before confirmation can be expedite the pursuer requires to find caution for his intromissions as executor foresaid. [*State circumstances which render the application necessary.*] He therefore makes this application to the Court to have the amount for which he shall be required to find caution restricted.

3. The debts left due by the said D., together with his funeral expenses, have already been discharged by the pursuer, and the pursuer is his sole next of kin, and the only person beneficially interested in the estate of the said D. [*or—*

The amount of the debts left due by the said D. and his funeral expenses will not exceed £ .]

4. The parties beneficially interested in the residue of his estate are his widow B., his three surviving children, viz.:—The pursuer, E. and F. [*design them*], and the children of C. [*design her*], a daughter of the said D., who predeceased him, viz.:—G. and H. [*design them*]. The said B. and E. consent to this application being granted. The consent of the said F. cannot be obtained in consequence of his residence abroad. The said G. and H. are in minority, but their father I., as their administrator-in-law, also consents.

V. APPLICATION FOR RESTRICTION OF CAUTION

PLEA IN LAW

In the circumstances condescended on, the pursuers are entitled to have the caution to be found by them restricted as craved.

FORM OF NEWSPAPER INTIMATION

Commissariat of Edinburgh

An application having been presented to the Sheriff of the Lothians and Peebles at Edinburgh by A. [*design him*] craving that the caution to be found by him as executor-dative of B. [*design him*] may be restricted to the sum of £ , any person having objection thereto has been ordained to lodge the same with the Commissary Clerk within ten days from the date of this advertisement.

Signed by Pursuer or his Agent.

[*Date.*]

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